

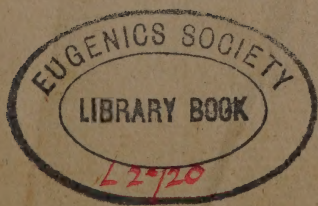
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George S. Fry



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THE  
C A S E  
OF  
MARRIAGES

BETWEEN  
NEAR KINDRED  
PARTICULARLY CONSIDERED,

With Respect to

THE DOCTRINE OF SCRIPTURE,

THE LAW OF NATURE,

AND

THE LAWS OF ENGLAND.

*With some Observations relating to the late Act to  
prevent Clandestine Marriages.*

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L O N D O N :

Printed for J. WHISTON, and B. WHITE, at  
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TO THE  
K I N G.

*May it please your Majesty,*

**T**HE Subject of the ensuing Discourse, it is humbly presumed, may not be thought altogether beneath your Royal Notice; as it is so intimately connected with the Laws of your Majesty's Kingdoms; and as the wise Provisions of our most excellent Consti-

tution relating to it, have been too generally misapprehended, to the great Injury of many of your Majesty's most faithful Subjects.

A Controversy upon this Topic arose in the Reign of King *Charles* II. which so much engaged the Attention of that Prince, that the Cause then depending, was, in Pursuance of his special Command, adjourned for the Opinion of all the Judges.

Your Majesty's Royal Patronage to this Essay, is most humbly desired, not with a View to preclude, but rather to countenance and encourage the strictest Examination of those Principles and Decisions which so  
strong-



strongly affect the Happiness of your Majesty's Subjects ; who from a long Experience of the paternal Indulgence and Protection, by which your most auspicious Government hath been so eminently distinguished, place their entire Confidence in your Majesty as the Father of your People, and the generous and vigilant Guardian of all their Civil and Religious Liberties.

That the diffusive Influences of your wise and gracious Administration may be long continued for the Joy of the present, and the Admiration of future Ages ; and that the Protestant Succession in your most illustrious Family may convey to distant Generations all the Blessings,

( vi )

which the Accession of it to the  
Throne of these Kingdoms so  
happily rescued and secured, are  
the most fervent Prayers of,

*May it please your Majesty,*

*Your MAJESTY's*

*most Dutiful,*

*most Loyal, and*

*most Devoted Subject,*

JOHN FRY.



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T H E

P R E F A C E.

**I**T may not be improper to introduce the following Treatise to the candid Examination of the Public, by exhibiting some Account of the Advantages which may probably arise from a disinterested and careful Discussion of the Subject Matter of it. The professed Design of it is to shew the Lawfulness, and, in some Cases, the Expediency of Marriages between Persons near a-kin : which is an Affair of such extensive Connexion and Influence, that, perhaps, there are but few Families, but may have either directly, or indirectly, some Concern therein ; and the great Importance of it we may easily discern by the ensuing Considerations.

Many and very injurious Consequences evidently follow from the erroneous Sentiments which have been too generally entertained concerning it. For if Marriages contracted between near-collateral Kindred are warrantable, both by the Law of Nature and of Revelation, as the Au-

thor apprehends he hath demonstrated in the following Dissertation, then the separating Persons so married, annulling their Marriages, bastardizing and disinheriting their Issue, and utterly ruining whole Families, driving some out of their native Country, and laying exorbitant and oppressive Fines upon others †, must certainly be unjustifiable and iniquitous.

And as these severe and pernicious Practices are professedly founded upon the Prohibitions contained in the xviiiith Chapter of *Leviticus*, this shews the Necessity of making an unbiassed and careful Inquiry into the real Occasion, and genuine Design, of the *Mosaic* Constitution, in this Respect : That by having the fullest Conviction, that there is not any Foundation in Scripture, for an Opinion productive of the most calamitous Effects, it may be exploded and renounced with a general Contempt.

To have a true and consistent idea of this Affair, more immediately concerns the Welfare of the Public than many are aware of ; as from the numerous Branches of the present Royal Family, from whom, under Providence, the Nation so justly felicitates itself, upon the most promising Prospects of extensive Advantage, it may, on many Occasions, be judged highly expedient, that Intermarriages should take Place between some of their near Kindred. The Consequences of which may be not only

† Things frequently done by Ecclesiastical Courts.

conducive to their own personal Satisfaction and Felicity, but likewise intimately connected with the National Security, and the Establishment and Enlargement of the Protestant Interest.

Again, the Conduct of the Enemies of our Holy Religion, suggests the Propriety of a critical and free Decision of this Subject. In their abusive Insults on Revelation, some of them having urged, with a peculiar Satisfaction, the Advantages with which they pretend the Scripture History hath furnished them upon this Head.

Thus the Author of "*Christianity as old as the Creation*," hath charged with Immorality that renowned Patriarch *Abraham*, on this Account.

" Was not *Abraham* [says he] though a  
 " Prophet, and so dear to God, that he would  
 " not destroy a neighbouring Town without  
 " acquainting him with it, guilty of an in-  
 " cestuous Marriage, his Wife being his Sister  
 " by the Father's Side †?" Whereas if it ap-  
 pear, on an impartial Review, that this, and  
 such other Marriages as the following Differ-  
 tation attempts to justify, were not contrary to  
 the Law of Nature, nor forbidden by any  
 positive Law of God before the Introduction  
 of the *Mosaic* Dispensation, no just Cause of  
 Reproach can be alleged against the Alliance

† Chap. XIII. pag. 219. Second Edit. 8vo.



*Abraham* contracted with his near Relation ; but the severe Asperſion caſt upon him, on Account of his Marriage, muſt, in the Judgment of the impartial, be altogether groundleſs and unjuſt.

The late Viſcount *Bolingbroke* hath, indeed, attempted to diſparage the Scriptures by a different Meaſure. He was of Opinion, that Marriages between near collateral Kindred were not forbidden by the Law of Nature, but that the Scriptures had prohibited them. From hence he endeavours to vilify the Sacred Writings, as being inconfiſtent with the Law of Nature. But it is preſumed, that in the enſuing Tract it is clearly proved, that the Inconfiſtency is not real, but only pretended, and imaginary.

By the Inſtructions and Promiſes of the Goſpel, which are entirely conſiſtent with Reaſon, we are poſſeſſed of Advantages for the Knowledge and Performance of our Duty, which are far ſuperior to the Discoveries of the Light of Nature, which cannot fully aſcertain the Reſtoration of penitent Sinners to the Hopes of Immortality. But through the free and un-deſerved Goodneſs of God in Chriſt, there is undoubted Aſſurance given in the Goſpel, that Repentance towards God, and Faith in our Lord Jeſus Chriſt, exerted and diſplayed in the Fruits of Piety, and Holineſs, will avail to Acceptance unto eternal Life. This glorious Revelation we ſhould highly venerate and eſteem ; and by its ſacred Inſtructions and

Pre-

Precepts, which constitute a perfect Rule of moral Duty, as well as an unerring Standard of Divine Truth, our Sentiments and Proceedings in all Affairs of Religion, and Virtue, should be uniformly and perpetually regulated and maintained. But farther ;

With regard to the particular Subject of Inquiry now laid before the Public, the Author apprehends, he hath fully demonstrated that some Marriages which have been commonly censured as unlawful, are not only lawful, but under some Circumstances fit and expedient: and, in particular, that such as are contracted between an Uncle and a Niece, and with the Sister of a deceased Wife, may be sufficiently justified by the Authority of the Law of Nature, and the Laws of our National Constitution.

All the Statutes that concern this Affair are herein particularly considered, and several great and material Mistakes and Omissions made by the Collectors and Publishers of them, as printed in the Statute Books, now in common Use, clearly shewn. And all those Parts of them, which concern this Subject, are herein inserted at large: And, in particular, the Statute of the 1 M. 1. Sess. 2. Ch. 1. (so remarkable in this Case) which is not a temporary Statute, nor ever repealed, yet hath been left out of all our Statute Books now in common Use, is here printed from a Copy thereof, compared with, and corrected by, the Parliament Roll.

And

And the principal adjudged Cases in the Books of Common Law relating to this Subject, are reviewed and set in a clear and conspicuous Light. The Canon Law relating to this Affair, is also herein examined, and fully exhibited to the Reader's View.

The Table set up in our Parish Churches, which prohibiteth the Marriages herein vindicated, is shewn to be now of no Authority in Law.

And it is herein also fully and clearly proved, that the Cognizance of this Matter, as the Law now standeth, rightfully belongs to the Courts of Common Law, and not to the Ecclesiastical Courts, though they would arrogate to themselves the sole Right to it.

All which is humbly submitted to the Candour of the Public,

## ADVERTISEMENT.

*WHEREAS* there are some Authors cited in the ensuing Dissertation as now living, which have been some Time dead, and others under a lower Character than they now bear, it may be fit here to advertise the Reader, that the ensuing Treatise was written a considerable Time since, and the greatest Part of it printed off last Winter, though not published till now.



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THE  
CASE  
OF  
MARRIAGES  
BETWEEN  
NEAR KINDRED,

Particularly considered, &c.

**T**HE Case of Marriage between near Relations is a Point both of a moral and practical Nature ; that has not, (as I humbly conceive) been hitherto well understood ; a candid Attempt therefore to shew it in a better Light, needs no Apology. This therefore I shall endeavour to do in the following Method.

- I. I shall consider the original Institution of Marriage, by Almighty God, at the Creation of our first Parents.

B

III. Ex-



II. Examine what Light the Holy Scriptures afford in the Point before us, from that Time to the giving of the *Mosaic* Law.

III. Shall enquire how the Case stood under the *Mosaic* Dispensation, and whether the Law of *Moses* made any Alteration in this Matter.

IV. Shall then proceed to consider the Law of Nature; that we may see, what Help may be drawn from this Quarter to determine the Point in question.

V. And lastly, I shall reduce the Point to the Laws of our Land, that it may appear, whether there be any Law in force here, against the Marriages I am pleading for.

I. First, I am to consider, the original Institution of Marriage by Almighty God, at the Creation of our first Parents, which is thus given us by *Moses*.—*The Lord God caused a deep Sleep to fall upon Adam, and he slept, and he took one of his Ribs, and closed up the Flesh instead thereof; and the Rib, which the Lord God had taken from Man, made he a Woman, and brought her unto the Man. And Adam said, this is Bone of my Bone, and Flesh of my Flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a Man leave his Father and his Mother,*

*Mother, and shall cleave unto his Wife: and they shall be one Flesh* \*. Or, as it is in the *Samaritan Pentateuch*, and in the *Septuagint*; they two shall be *one Flesh*. Our blessed Lord and Saviour (who we are sure could not err) from God's making at first but one Man and one Woman, joining them in Marriage, and ordaining, that they two should be *one Flesh*, argued against the *Jews*, and inferred the Unlawfulness or Unfitness of Poligamy and Divorces †.

Others have inferred from these Words,—*A Man shall leave his Father and his Mother and cleave unto his Wife*, the Unlawfulness of Marriage between Parents and Children; and I think with good Reason; for since the Command here, with respect to Marriage, is—that a Man *shall leave Father and Mother*, I think it is very plain, he ought not to marry his Mother; and it is much the same as to Father and Daughter, and consequently, between Parents and their Grand-children, and Great-grand-children; for in the ascending and descending Line, the further removed, the more unfit and unreasonable it appears, that they should marry one another.

Let us next consider the Case with respect to collateral Marriages; and here it is very observable, that when our Great Creator formed the first Woman, that she might be a fit Wife for *Adam*, he made her not out of the *Earth*, but out of *Adam's own Flesh*, so that she was

\* *Gen. ii. 21, 22, 23, 24.*  
*Mark x. 5, 6, 7, 8, 9.*

† *Matt. xix. 4, 5, 6.*

truly a Part of his Flesh before ſhe became his Wife; and when the Almighty preſented her to him\*, he ſaid, *this is Bone of my Bone, and Fleſh of my Fleſh*, a Phraſe uſed for Kindred †.

And by making at firſt but one Pair, and commanding them to multiply, ſo that all Mankind might deſcend from them; it became abſolutely neceſſary, that the next Marriage ſhould be between *Brother and Siſter*, and that by the ſovereign, and righteous Will and Apointment of God himſelf.—Had there been any *Impurity* in ſuch Marriages, we may be very certain, that infinite Power, directed by unerring Wiſdom and Goodneſs, would never have inſtituted Marriage at firſt, between Perſons of the ſame Fleſh, and by the original Conſtitution of the human Race, made Marriage betwixt Brother and Siſter neceſſary, when he could as eaſily have made two, or more Pairs out of the Earth at his firſt Creation of Mankind, as one Man only, and then there would have been no Neceſſity for Marriage between Brother and Siſter, nor between Perſons of the ſame Fleſh. And, that there is no Impurity in ſuch Marriages, will, if I miſtake not, be made evident in the further Proſecution of this Subject. I therefore proceed,

\* “ God himſelf (ſaid Biſhop *Patrick*) made the Eſpouſals between them, and joined them together in Marriage. *Patrick* on *Gen.* ii. 22. † *Gen.* xxix. 14. *Judges* ix. 2. 2 *Sam.* v. 1. and xix. 12, 13. 1 *Chron.* xi. 1.

II. To examine what Light the Holy Scriptures afford in the Point before us, from that Time to the giving of the *Mosaic* Law.

Till the Time of *Abraham*, which was about two thousand Years after the Creation, the Scripture gives us no particular Account of Intermarriages, only in general, *the Sons of God took Wives of the Daughters of Men* \* (that is, as, I think, it is generally understood) the Offspring of *Seth* took Wives of the apostate Race of *Cain*, which was so displeasing to God, that it seems to be represented as one Reason of his bringing the *Flood* upon them. But, as this Text may admit of another Interpretation, and it is not certain which is the Right, I lay no stress on it.

The first Marriages after the Deluge, of which we have any particular Account, are those of *Abraham* and *Nabor*, the Sons of *Terah*, and we find they married their near Kindred †. *Abraham* married *Sarah* his Sister, his own Father's Daughter; and *Nabor*, *Milcah* his Brother *Haran's* Daughter. *Abraham* is renowned in Holy Writ, as one of the greatest and best of God's Servants. He is the first that has there the Title of Prophet, ‡ and the only one that had the Honour to be called the Friend of God §. He was the Father of God's Covenant People; and it is observable, that he not only married his Kinswoman himself; but when

\* Gen. vi. 2, &c.

† Gen. xi. 29.

‡ Gen. xx. 7.

§ 2 Chron. xx. 7. and St. James ii. 23.



he was old, and thought himself near his end, he took care his Son *Isaac* should do the same. He made his chief Servant, the Steward of his House, swear to take a Wife of his Kindred unto his Son \*. And accordingly, by the special Providence of God †, he took *Rebekah*, of his Uncle *Naber's* House to be his Wife. By this Marriage he had two Sons *Jacob* and *Esau*, *Esau* (not regarding the Command nor Example of his Father and Grand-father) took two Wives of the Descendants of *Canaan*, which we find was a great Grief to his pious Parents, ‡ on which *Isaac* charged his Son *Jacob* to take a Wife of the Daughters of his Uncle *Laban*, his Mother's Brother, § which Command he carefully obeyed.

*Esau* observing, that his Parents were grieved, on Account of his marrying with Strangers, in order to please them in future, married his Uncle *Ismael's* Daughter, || and though he had two Wives before, we don't find he was ever blamed for this; his first Wives being such as he ought not to have married.

We have no particular Account who any of the Patriarchs, the Sons of *Jacob* married, except *Judah* and *Joseph*.

*Judah* also disregarding the Commands and Example of his pious Progenitors, married a *Canaanite*, the Daughter of *Hirah*, and by her had three Sons, *Er*, *Onan* and *Shelab*, \*\* The

\* Gen. xxiv. 3, 4. † Gen. xxiv. 15, to the End of the Chapter. ‡ Gen. xxvi. 34, 35, and xxvii. 46. § Gen. xxix. 10, &c. || Gen. xxviii. 8, 9. \*\* Gen. xxxviii. 1—5.

two first of these were struck dead for their Wickedness. \* Yet, by the Account Holy Scripture gives us of their Marriages, it is plain, that it then was become customary when a Man died and left a Widow without a Child, for the next Brother to marry her, which Custom was afterwards turned into a Law, by the divine Lawgiver, as I shall have Occasion to observe in another Place.

*Joseph* underwent many Vicissitudes of Fortune, till at last, by the special Providence of God, he was made Governor of *Egypt*, by King *Pharaoh*; who appointed for him *Asenah*, the Daughter of *Potiphera*, Priest of *On*, to be his Wife; but as he was under a Necessity to accept of her †, nothing can be inferred from this Marriage relating to this Point,

The next Marriage mentioned in Scripture, that gives any Light in this Case, is that of *Amram* with his Aunt ‡. *Amram* was the Son of *Kobath*, the Son of *Levi*; his Wife's Name was *Jocbebed*, and it is exceeding clear in Holy Scripture, that she was his Father's Sister §. By her he had *Aaron* and *Moses*, even that *Moses* by whom God gave those Laws, that have been supposed to forbid such Marriages.

*Moses* having offended *Pharaoh* King of *Egypt*, was obliged to fly out of his Kingdom to save his Life. He therefore went into the

\* *Gen.* xxxviii. 7—10. † *Gen.* xli. 45. See also Mr. *Chandler's* Defence of the Prime Ministry and Character of *Joseph*. p. 403. ‡ *Exod.* ii. 1. § *Exod.* vi. 20. and *Numb.* xxvi. 58, 59.

Land of *Midian*, and dwelt there with *Reual* (who was also called *Jethro*) a Priest or Prince of that Country\*. And after he had dwelt with him many Years (as is probable) and not knowing whether it would be ever safe for him to return into *Egypt* to his Kindred; he married *Zipporah* one of *Reual's* Daughters; yet it is certain, his Marriage with this Woman (she not being of his Kindred) produced some trouble to him afterwards †.

On the whole, it is plain, 1st, That some of the *best* of God's People, not only married their Kindred, but when they were old, recommended the same to their Children; a clear Evidence this, that they knew no Law of God against it; and consequently, that there could be no such given by God to all Mankind before the Establishment of the *Mosaic* Law, as some have apprehended there was.

2dly, It is also farther evident, that those who married their near Kindred had the Blessings of God more conspicuously on their Offspring than those that married remotely; which seems to me an Indication of his Approbation of it; at least, it is a further Illustration of what was observed at the close of the last general Head, *viz.* That there is no Impurity in such Marriages ‡. I come now,

\* *Exod.* ii. 15—22. † *Numb.* xii. 1. And *Miriam* and *Aaron* spake against *Moses* because of the *Ethiopian* Women whom he had married. See also *Exod.* iv. 25, 26. ‡ Pag. 4.

III. To enquire how the Case stood under the *Mosaic* Dispensation, and whether the Law of *Moses* made any Alteration in this Matter; the Laws that have been for some Ages taken for Prohibitions of Marriages between near Kindred are contained in the eighteenth Chapter of *Leviticus*. And the Punishments which were to be inflicted on the gross and notorious Breakers of those Laws, are in the twentieth Chapter of the same Book added to each particular Precept.

These Laws are more than three thousand years old, and the Customs and Usages of those Times, now but little known, nor can they be known by us; any further, than they may be learned from the Writings of *Moses*, and other antient Authors who lived nearest to those Times; or, from those who wrote at any Time under the same divine Influence and Direction which was given to the *Hebrew* Law-giver.

It is generally allowed, that the best Way to come at the true Meaning of antient Laws is to examine, in what Sense the Words and Phrases in which the Laws are expressed, were used, at, and before the Time they were given. And what Evils the Laws were intended to prevent, and what those that broke them were blamed for on that Account.

First then, let us examine, in what Sense the Words and Phrases, in which the Laws were expressed, were used, at, and before the  
Time



Time they were given. The Precepts run thus, *None of you shall approach to any that is near of kin to him, to uncover their Nakedness.* Leviticus xviii. 6. and

V. 8. *The Nakedness of thy Father's Wife thou shalt not uncover.*

V. 14. *Thou shalt not uncover the Nakedness of thy Father's Brother, thou shalt not approach to his Wife.*

V. 16. *Thou shalt not uncover the Nakedness of thy Brother's Wife.*

V. 20. *Thou shalt not lie carnally with thy Neighbour's Wife, &c.*

All the Words that need Explanation, in order to understand the true Meaning of them, are, those which are here rendered *near of Kin*, the Phrase *uncover the Nakedness*, and the Word *Wife*; for I think the Word *approach*, notwithstanding the Criticism some learned Commentators have made on it, is of it self sufficiently clear.

I will begin with the Phrase *uncover the Nakedness*, which, for some Ages, seems to have been mistaken in these Laws for a Prohibition of Marriage, though it is never once used in that Sense throughout the whole Bible, but rather for a Breach of it.

The Word *גלה*, Nakedness, is put in many Places for *the secret Parts*, and then to uncover the Nakedness, is literally to *uncover the secret Parts*, so as to expose them to public View; in this Sense it is used, Genesis ix. 20, 21, 22, 23.—*Noah—drank—Wine—and was uncovered*

*uncovered within his Tent. And Ham—saw the Nakedness of his Father, and told his two Brethren without, and Shem and Japhet took a Garment and laid it upon both their Shoulders, and went backward, and covered the Nakedness of their Father, and their Faces were backward, and they saw not their Father's Nakedness. Exodus xx. 26. Neither shall thou go up by Steps unto mine Altar, that thy Nakedness be not discovered thereon; i. e. least it be exposed to public View.*

And the xxviii. 42. — *Thou shalt make them [namely, the Priests] Linen Breeches to cover their Nakedness; i. e. to prevent it from being exposed to the View of the People.*

The same Word is used for seeing the weak or unguarded Parts of a Country; in this Sense we find it used, *Genesis xlii. 9.—Ye are Spies, to see the Nakedness of the Land you are come.* That is, to view such unguarded Parts of the Land as were unfit to be exposed to the View of Adversaries, or those that might in future be such.

It is also used for any unclean, filthy, indecent or shameful Thing; as, in *Deuteronomy xxiii. 14.—There shall thy Camp be holy, that he see no unclean Thing, ערוה, Nakedness of any Thing in thee, as the Margin of our Bible renders it.*

The same Word is used in that remarkable Text, *Deuteronomy xxiv. 1. When a Man hath taken a Wife and married her, and it come to pass, that she find no Favour in his Eyes, because he hath found some Uncleaness in her: then let him*  
*write*

*write a Bill of Divorcement, and give it in her Hand, and send her out of his House. And—she may go and be another Man's Wife.* The Word here rendered *Uncleanness*, is the same which in *Leviticus* is rendered *Nakedness*; and the Margin of the Bible here renders it *some Matter of Nakedness*. What is here meant by the Words, *some Uncleanness, or Matter of Nakedness*, is not very plain; but it is clear from the Words of our blessed Saviour, *Matthew* xix. 7, 8, 9. that it must be something less than *Fornication*, for he there saith, *that Moses gave them that Permission for the Hardness of their Hearts, and that from the Beginning it was not so.* And then gave his own Command in Opposition to it. That which seems most likely to be intended by it, is some such *loose and immodest Behaviour* in the Woman, as caused her *Chastity* to be suspected; but, whatever might be understood by it, it is evident, it was something for which *Moses* permitted them to put away their Wives, and to dissolve their *Marriage*.

I have examined the Holy Scriptures, with all the Care and Impartiality I am capable of, with relation to this Point; and I think, I may safely venture to affirm, that the Phrase, *uncovered the Nakedness*, is never once used in Scripture for *Marriage*, nor yet for the lawful Use of the Marriage-bed: But a Phrase which is quite contrary to it, is there used in that Sense, namely, *Spreading a Skirt or Garment over a Woman, and covering her Nakedness.*

Thus

Thus we have it, *Ruth* iii. 9. *Spread thy Skirt over thy Handmaid.* That is, marry me; or, as Mr. Poole, in his Note on this Text expresses it, “ Take me to be thy Wife, and perform “ the Duty of a Husband unto me \*.”

God’s Covenant with *Israel* is represented in Scripture as a *Marriage* Covenant. Turn, O back-sliding *Israel*, for I am married unto you †. The making of that Covenant is by the Prophet *Ezekiel* thus expressed,——*When I passed by thee, and looked upon thee, behold thy Time was the Time of Love, and I spread my Skirt over thee, and covered thy Nakedness: Yea, I swear unto thee, and entred into a Covenant with thee, saith the Lord God, and thou becomest mine ‡.*

Afterward, in the same Chapter, their Breach of Covenant with God by their abominable Transgression of some of those Laws, in the eighteenth of *Leviticus*, is set forth §, and Almighty God is thus represented as speaking to them.——*O Harlot, hear the Word of the Lord. Thus saith the Lord God, because thy Filthiness was poured out, and thy Nakedness discovered through thy Whoredoms with thy Lovers, and with the Idols of thy Abominations, and by the Blood of thy Children, which thou didst give unto them; behold therefore I will gather all thy Lovers, with whom thou hast taken Pleasure. I will even gather them round about against thee, and will discover thy Nakedness unto them, that they see all*

\* Mr. Poole on *Ruth* iii. 9. and Dr. Hammond on *1 Cor.* v. 1.

† *Jer.* iii. 14.

‡ *Ezek.* xvi. 8.

§ *Ezek.* xvi. 15—34, 50.



*thy Nakedness. And I will judge thee as Women that break Wedlock and shed Blood are judged—\**

And in the twenty-third Chapter of *Ezekiel*, we have much more to the same Purpose (to which I refer the Reader.)

The Word *Nakedness*, and *uncovering or discovering of Nakedness*, is often used by the Prophets in this Sense, *viz.* When People are exposed to Shame on Account of their sinful revolting from God. Thus it is used concerning the *Daughters of Babylon*, *Isaiah* xlvii. 1, 3. And thus it is used concerning *Nineveh*, *Nahum* iii. 4, 5. And concerning *Jerusalem*, *Lamentations* i. 8, 9. See also *Isaiah* iii. 16, 17. and *Jeremiah* xiii. 22, 26, 27.

On the Whole it is plain, that for a Man to spread his Skirt over a Woman, and to *cover her Nakedness*, in the Scripture Phrase, signifies the same as to marry her (as has been observed by many learned Commentators †.)

And to uncover her Nakedness is the reverse of it, and is put for something that is a Cause for breaking or dissolving of Marriage; and when it is used for carnal Knowledge, always (if I mistake not) *Adultery* or *Fornication* is to be understood by it, and never the lawful Use of the Marriage-bed.

Now it is well known, and indisputable, that *Adultery* is a Breach of Marriage. The Command, *Exodus* xx. 14. which, in our present Translation is, *Thou shalt not commit Adul-*

\* *Ibid.* 35—38. † Dr. Hammond, Mr. Poole, Bishop Patrick, Mr. Pyle, &c.

tery ; in our old *English* Bibles, was, *Thou shalt not break Wedlock.*

And, I think, according to our Blessed Saviour himself, *Fornication* also, when committed before Marriage, but not discovered till afterwards, is allowed by him, to be a just Cause for a Breach or Dissolution of Marriage, *Matth. xix. 9.*—*I say unto you, whosoever shall put away his Wife, except it be for Fornication, and shall marry another, committeth Adultery :* Here you see our Saviour, when he prohibits a Man's putting away his Wife, excepts the Case of *Fornication* : So that Fornication, as I said before, was allowed by him to be a sufficient Cause for the Breach of Marriage. That is, as *Dr. Whitby* on this Text observes, *Fornication committed before Matrimony, and found after Cohabitation.*

From what has been observed, it is very evident, the Phrase *uncover the Nakedness*, though never once used in Scripture for Marriage, is there used in an extensive Sense ; not only for uncovering the secret Parts in a literal Sense, or for *seeing them*, and for *debauching* the Persons there mentioned ; but also for any Thing that is filthy, shameful or immodest. And therefore it may be reasonably understood in these Laws, to be not only a Prohibition of the Act of Uncleaness, but also of every Thing that may be a Temptation to it.

Let us next examine what is meant by *שאר כשר* translated *near of Kin*, in *Leviticus xviii. 6.* The Word *שאר*, translated *Kindred* (saith *Dr.*

Dr. *Willet* on this Text) signifieth properly a *Remainder*, because the Kindred is *tanquam aliquid carnis*, as a Part or Remnant of ones Flesh ; but Mr. *Ainsworth*, in his Note on it, affirmed it signifieth *Flesh*, and for Proof of it cites *Psalms* lxxiii. 26. *Prov.* v. 11. and xi. 17. as כשר also doth, and is used for *Kindred*, *Gen.* xxix. 14. He translated the Words *near Kindred of his Flesh*. Our old Bibles, viz. *Tindal's*, *Matthew's*, and the Great Bible, all render it *nearest Kindred* ; most of the other Translations since (except that now in use) has rendered it, *Kindred of his Flesh* ; and though our present Translation has rendered it, *near of Kin*, yet in the Margin it is put, *Remainder of his Flesh*. And Bishop *Patrick*, and Bishop *Kidder* both think this to be the Meaning of the *Hebrew*. “ It must be confessed” (said Bishop *Patrick*, in his Comment on this Text) “ that these “ Words, *near of Kin*, do not sufficiently express the full Sense of the *Hebrew* Phrase, “ nor are they of a determinate Signification.”

On the Whole, it is plain, the Phrase must mean, one that is *Flesh of the same Flesh*. Now I beg leave to remind the Reader what I observed under the first general Head ; *namely*, that God Almighty himself, at the first Institution of Marriage, in the Time of Man's Innocency, ordained the first Marriage to be between Persons of the same Flesh ; and thereby made it necessary, that the next Marriage should be betwixt Brother and Sister : And I further observed under the second general Head, that  
some

some of the best of God's People married their near Kindred; and that those that did so, had the Blessing of God more conspicuously on their Children, than those that married otherwise; and particularly, that *Moses* himself, by whom these Laws were given, was descended from a Marriage of a Nephew with his Aunt.

Is it not absurd then to imagine, that a holy and righteous God should prohibit Marriage with such, under the Denomination of the Abominations of the *Egyptians* and *Canaanites*, for which he cast them out of the Land, when he was bringing into their Room, a People that were descended from, and contracted the like Marriages? If this is not an absurd Supposition, I know not what is. I take the Prohibitions to be pointed against all carnal Impurity, as well as that foul and detestable Sort of it, which was so customary among the *Egyptians* and *Canaanites*. And if so, they must be of a moral Nature; and it may be observed here, that all such Prohibitions ought to be taken in their largest and most extensive Sense for preventing the Evils against which they were intended. This is a Rule generally allowed. I will give an Instance or two. It is agreed, that the Command, *Exod* xx. 12. *Honour thy Father and Mother, &c.* is to be extended, not only to our natural Parents, to whom it most immediately relates; but to *Rulers* and *Governors*, and other *Superiors*: And there are many that also extend it to *Equals* and *Inferiors*. So the Command, *Exod.* xx. 14. *Thou shalt not commit Adultery*, is extended, not

C

only



only to the Act of Uncleanness committed by *two*, one of whom is a married Person (which is the Meaning of it, strictly taken) but it is extended also to *Fornication* and all *Approaches to Uncleanness* of any Kind.

And by the same Rule it is reasonable to take this Prohibition, now under Consideration (if it is indeed a moral one) in its largest Sense. So that the Words here translated, *near of Kin*, which, according to the *Hebrew*, might have been rendered *Remainder of his Flesh*, must be extended, not only to all such as we usually call Kindred (though they are especially included in it) but to all that are descended from the *same Flesh*.

So that the sixth Verse of the eighteenth Chapter of *Leviticus* may be thus paraphrased;  
 “ none of you (namely) no Man shall come  
 “ near to any that are descended from the same  
 “ Flesh, to do any Action, or use any such  
 “ Freedom, as may be a Temptation to him to  
 “ commit Adultery or Fornication with her.”  
 Nay, mayn't it be extended to *any Woman whatsoever*? All the Offspring of our first Parents being as much [the same, or] *one Flesh*, as [the same, or] *one Blood* \*.

I come now to examine what is meant by the Word *אשה* Wife. Now it is well known to the Unlearned as well as the Learned, that  
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\* Οὐκείον ἄλλος ἀνδρῶν. ἀνδρῶν καὶ φίλον. “ All Men naturally are of Kin and Friends to each other, saith *Aristotle*.  
 “ *Et fratres etiam vestri sumus jure naturæ matris unius: We are all your Brethren in the Right of Nature, our common Mother,*  
 “ said *Tertullian* of old, in the Name of the *Christians* to the  
 “ *Hea-*

the Word Wife signifies generally a married Woman, her Husband being alive; and after his Death she is commonly called a Widow, not a Wife. Yet it must be confessed, that this cannot be inferred merely from the Use of the Word itself; for the *Hebrew* Word אשה signifies no more than a Woman, whether married or unmarried; it is therefore by the Context and Connection we must judge when it is used for a Man's Wife, and when for a single Woman. By this then, let us examine how the Word is to be understood in the 8, 14, 15, 16, and 20th Verses of the 18th Chapter, and in the 10, 11, 20 and 21st Verses of the 20th Chapter of *Leviticus*, where the Laws, and the Punishments for the Breach of them, are set forth. The 20th Verse of the 18th Chapter runs thus, *Moreover, thou shalt not lie carnally with thy Neighbour's Wife, to defile thyself with her.*

And in the 20th Chapter, Verse 10, where the Punishment is set forth for the Breach of that Law, the Words are; *The Man that committeth Adultery with another Man's Wife, even he that committeth Adultery with his Neighbour's Wife, the Adulterer and the Adulterers shall surely*

“ *Heathens.* We are but several Streams issuing from one primitive Source; several *Branches* sprouting from the same *Stock*, several Stones hewed out of the same Quarry.—  
 “ One Blood flows in all our Veins;—we are only distinguished by some accidental, inconsiderable Circumstances of  
 “ Age, Place, Colour, Stature, Fortune, and the like; in which  
 “ we differ as much from ourselves in Succession of Time.

“ So that what *Aristotle* said of a Friend, is applicable to  
 “ every Man: Every Man's is ἅλλοι αὐτὸς, another ourself.”  
*Barrow's Works, Folio, Vol I. Sermon. xxx.*

*be put to Death.* I suppose it will be admitted here, by those that are in a different Way of thinking from me, in the main Point, that the Word *Wife* in those Places, denotes a Woman whose Husband is alive; otherwise this must be a Prohibition of marrying a Widow Woman (in which Sense, indeed, some of the *Jews* took it) but that Sense, I apprehend, to be plainly contrary to the Doctrine of *St. Paul*, as well as to the Opinion and Practice of *Christians* in general. Let us then examine into the Meaning of the Word *Wife*, in the other Places above mentioned, that relate to the Point, Chap. xviii. Ver. 8. *The Nakedness of thy Father's Wife thou shalt not uncover, it is thy Father's Nakedness.* Ver. 14. *Thou shalt not uncover the Nakedness of thy Father's Brother, thou shalt not approach to his Wife, she is thy Aunt.* These Words here translated, *she is thy Aunt*, might as well have been rendered, *she is thy Father's Brother's Wife*, as was noted in the Margin of some of our old Bibles, though it is omitted in the Translation now in use. Ver. 15. *She is thy Son's Wife.* Ver. 16. *She is thy Brother's Wife; it is thy Brother's Nakedness.* And Chap. xx. ver. 11. *The Man that lieth with his Father's Wife, hath uncovered his Father's Nakedness.* Ver. 20. *If a Man shall lie with his Uncle's Wife he hath uncovered his Uncle's Nakedness.* I think the Phrase, *it is thy Father's Nakedness*, in the 8th Verse of Chap. xviii. and the Words in the 14th Verse, which, as was observed, might have been rendered, *she is thy*  
*Father's*

*Father's Brother's Wife*; and in the 15th Verse, *she is thy Son's Wife*; being all in the present Tense, shew it is meant of their Wives, they being living. And the Words in Chap. xx. ver. 11. *hath uncovered his Father's Nakedness*; and Ver. 20. *He hath uncovered his Uncle's Nakedness*, also shew, it is meant of their Wives, they being alive; for after their Deaths, it cannot be properly said *it is*, but only *it was their Nakedness*. For as the Apostle argues, 1 Cor. vii. 4. The Woman is the Husband's as long as he lives only; afterwards, according to the 29th Verse of that Chapter, she is not so. The 21st Verse runs thus—*If a Man shall take his Brother's Wife, it is an unclean Thing, he hath uncovered his Brother's Nakedness, they shall be Childless*; or, (as it is in the Samaritan Copy) *they shall die Childless*. The Word here translated *an unclean Thing*, signifies, as the Margin of our Bible observes, *a Separation*; the Meaning therefore of the whole Verse may be thus expressed, “ If a  
 “ Man take his Brother's Wife, to commit  
 “ Lewdness with her, he hath thereby made  
 “ a Separation betwixt her and her Husband,  
 “ and done that wicked Thing, which the Law  
 “ I gave you (Chap. xviii. 16.) was principally  
 “ intended to prevent; they shall therefore,  
 “ for such their Wickedness, be put to Death,  
 “ and not suffered to have a Child, by such an  
 “ unlawful and detestable Act.” So that, hence also (if I mistake not) it is plain, the Word *Wife* must be taken properly for a Woman, whose Husband is living; how else can it be a *Separation* betwixt her and her Husband;



and how can he thereby uncover his Brother's Nakedness, since her Nakedness was his Brother's no longer than during his Life? If then, it is unreasonable to understand the Word Wife for a Widow Woman, in the 20th Verse of Chap. xx. (as is above shewn, and is in itself very evident) it is also unreasonable to take it in that Sense in any of those other Texts here examined; from hence therefore arises another good Argument to prove, that the Phrase, *uncover the Nakedness*, in these Laws, when it is used for *carnal Knowledge*, must mean Adultery or Fornication with near Kindred, and not *Marriages* with them; which will be further evident from what I shall observe concerning the evil Practices, the Laws we have been considering were intended to prevent; which I will now therefore proceed to examine.

The Introduction to them is, \* *After the Doings of the Land of Egypt, wherein ye dwelt, shall ye not do; and after the Doings of the Land of Canaan, whether I bring you, shall ye not do; neither shall ye walk in their Ordinances: And at the End of them it is added, † Defile not yourselves in any of these Things, for in all these the Nations are defiled that I cast out before you, and the Land is defiled: therefore do I visit the Iniquity thereof upon it, and the Land itself vomiteth out his Inhabitants. — That the Land spue not you out also when ye defile it, as it spued out the Nations that were before you: for whosoever shall commit any of these Abominations, even the Souls that commit*

\* Levit. xviii. 3.

† Ibid. 24, 25, 28, 29, 30.

*them shall be cut off from among their People; therefore shall ye keep mine Ordinances, that ye commit not any of these abominable Customs which were committed before you, and that ye defile not yourselves therein.*

And in Chap. xx. after the Conclusion of the Penalties that are added to each particular Precept, \* *Ye shall not walk in the Manners of the Nations which I cast out before you: for they committed all these Things, therefore I abhorred them.*

Is it not very plain from hence, that the Sins forbidden in these Precepts, are all of them such as were abominable in those Heathen Nations; and therefore such as were so in their own Nature? Things that were not only practised by them in their lewd Frolicks; but were so common among them, as to be called their *Ordinances* † and *Customs*; and practised too, as expressive of a religious Veneration, and as Ceremonies in the Worship of their shameful and detestable Deities, *Every Abomination to the Lord, which he hateth, have they done unto their Gods.* ‡

It is surely then altogether unreasonable to suppose the Things here forbidden, were any of them such as God himself made necessary to be done at the first Institution of Marriage,

\* *Levit. xx. 23.*

† “ The Word, in the Original (saith the Rev. Mr. *Moses Lowman*) properly signifies some Constitution, as a Law directing a Thing to be done.” *Rational of the Ritual.* p. 9.

‡ *Deut. xii. 31.*

in the Time of Man's Innocence; or, which the best of his own People, even the Fathers of those very Persons to whom these Laws were especially given, frequently practised, and that not only without Blame, but even with Approbation. Thus much in general.

But it may be fit here to enquire more particularly, what the evil Practices of the *Egyptians* and *Canaanites* were, that are called in Chap. xviii. and xx. of *Leviticus*, their *Ordinances* and *Customs*, that we may the more clearly see what the Abominations were, that the Laws we are considering were intended to prevent. And in doing this, I shall not confine myself to the Heathen Customs only; but, as I proceed, shall also examine what were the abominable Practices of the Children of *Israel*, after they had mingled themselves with those wicked People, and learned their most shameful Works; and also observe, what the Sins were that the Prophets reprov'd them for. That the *Israelites* broke all these Laws is very clear.

*They did not destroy the Nations concerning whom the Lord commanded them, but were mingled among the Heathen, and learned their Works: and they served their Idols, which were a Snare unto them. \* They did according to all the Abominations of the Nations which the Lord cast out before the Children of Israel †.*

\* *Psal.* cvi. 34, 35, 36.

† *1 Kings* xiv. 24.

First, They practised the most unnatural and barbarous of all Crimes, *viz. Burning their own Children in the Fire, as Sacrifices to their Idols* \*. This is an Abomination forbidden in *Levit. xviii. 21.*

And yet, as shocking as this was, the Children of *Israel* did the same; they also burnt their innocent Babes to Death as Sacrifices to *Moloch, Adramelech* or *Anammelech* †, which are supposed by some ‡, to be only different Names for the same Idol.—*They sacrificed their Sons and their Daughters unto Devils, and shed innocent Blood, even the Blood of their Sons and their Daughters, whom they sacrificed unto the Idols of Canaan: and the Land was polluted with Blood* §.

Secondly, They committed the unnatural and detestable Sins mentioned in the 22d and 23d Verses of the same Chapter; the first of these had been long common among the *Canaanites* ||. And, as for the second, Bishop *Patrick*, on the Text, hath shewn from ancient History, that “the *Egyptians* did it in the Worship of *Pan*—openly—in the View of all; and that it was so far from being kept secret, that they rather made *Ostentation* of it, which

\* *Deut. xii. 31.* See also *Whitby's Necessity and Usefulness of the Christian Revelation*, p. 220, 221.

† *2 Kings xvi. 3.* and *xvii. 31.* *2 Chron. xxviii. 3.* *Jer. vii. 31.* and *xix. 5.* and *xxxii. 35.* *Ezek. xvi. 20, 21.*

‡ *Lowman* on the Civil Government of the *Hebrews*. p. 24, 25.

§ *Psal. ciii. 37, 38.*

|| *Gen. xix. 5.* See also *Whitby's Necessity and Usefulness of the Christian Revelation*. p. 225, 226, 227—280, and *Bishop Gibson's 2d Pastoral Let.* p. 27.



I look upon (says he) as an Argument, that this had been an old Practice \*.” These Crimes are called by the common Name of Sodomy ; and (shocking as it is to Nature) they committed all these Abominations as sacred Rites to the Deities they worshipped † : And yet, as shameful and detestable as those Things were in themselves, and so plainly forbidden in their Law, the *Israelites* committed the same atrocious Crimes——*There were Sodomites in the Land, and they did according to all the Abominations of the Nations which the Lord cast out before the Children of Israel ‡—The Houses of the Sodomites were by the House of the Lord §.*

Thirdly, They committed the Sin prohibited in the 19th Verse ; as also the other Crimes mentioned in the said Chapter ; as is evident from the 24th to the 27th Verses thereof.

The *Israelites* did the same. *In thee (that is in Jerusalem) have they humbled her that was set apart for Pollution ||.*

Fourthly, They were guilty, not only of the indecent Acts of uncovering and exposing those Parts of their Bodies that Modesty requires should be kept covered, and which our first Parents made *Aprons* to cover \*\*. But they

\* Bishop Patrick, on *Levit.* xviii. 23.

† *Deut.* xii. 31.

‡ 1 *Kings* xiv. 24. and xv. 12. and xxii. 46.

§ 2 *Kings* xxiii. 7.

|| *Ezek.* xxii. 10. See *Pool's* Annot. on that Text.

\*\* *Gen.* iii. 7. Mr. *Weems* observes, that “ When the *Israelites* were coming out of *Egypt*, travelling towards *Canaan*, the Lord forbiddeth them to follow the beastly Idolatry of the  
“ *Moabites*

they also committed shameful and detestable  
Adul-

“ *Moabites*, to discover their Nakedness, as their Priests did.  
 “ — This filthy Idolatry (said he) was the Worshipping of  
 “ *Baal-peor*, who was also called *Priapus*. This *Priapus* was a  
 “ young Man in *Helespont*, who was expelled out of the Country  
 “ as a Corrupter of Youth. He went into *Greece*, where beastly  
 “ Persons made a God of him. The *Moabites* made choice  
 “ of him also for their God, and he was called *Baal-Peor*,  
 “ because he was made with his Nakedness discovered —  
 “ These filthy *Moabites* made choice of a God like unto them-  
 “ selves; and as their God *Baal-Peor* was a filthy God, so  
 “ were his Priests, in shewing their Nakedness.” *Weems’s*  
*Works*, Part I. p. 74, 75.

*Baal-Peor* is mentioned, *Numb.* xxv. 1—8. and called by  
 the Prophets [*Jer.* xi. 13, 15. and *Hosea* ix 10.] That shameful  
 Thing.

*Dr. Fuller* says, he took his Name from a Word which signi-  
 fies to lay open, an Idol, which shewed all that *Adam* covered  
 with Fig-leaves. *Pisgab Sight*, l. iv. ch. 7. sect. 26.

And *Mr. Peole*, in his Note on the Word *Peor* [*Numb.* xxv. 3.]  
 “ A Verb (saith he) signifying to open or uncover, because of  
 “ the obscene Posture in which the Idol was set, as *Priapus*  
 “ was, or because of the Filthiness which was exercised in his  
 “ Worship.”

*Bishop Patrick*, on *Deut.* xxiii. 17. saith, “ How abomi-  
 “ nable were such Persons as prostituted their Bodies in  
 “ honour of *Venus* and *Priapus*, and such filthy Deities! of  
 “ which Sort there were both Males and Females, consecrated  
 “ to such impure Services. And this (says he) was practised  
 “ in the Days of *Moses*; as appears from the History of those  
 “ who committed Fornication with the Daughters of *Moab*, who  
 “ exposed themselves in Honour of *Baal-Peor*..”

“ What (says *Dr. Whitby*) can strike a greater Horror into  
 “ our Thoughts than this Consideration, that they worshipped  
 “ τὰ ἀρρεθὰ μόρια, what Modesty will not permit us to men-  
 “ tion, paying their Worship to *Priapus*, and saying, τὸ δὲ  
 “ μόριον τὰ σωματικά τὸ τῆς γενέσεως αἰτίαν τιμᾶσαι προσηκόντως,  
 “ that Part of the Body was fit to be worshipped, whence we  
 “ receive our Being. *Diodorus Sculus* informs us, it was not  
 “ only worshipped among the *Egyptians* in the *Sacra* of *Isis* and  
 “ *Osiris*, ἀλλὰ καὶ τῶν αλλῶν ἐκ ὁλίγης καθιεροῦναι κατὰ τὰς τελείας,  
 “ but in the Solemnities of many other Nations, &c. —  
 “ *Theodoret* adds, that in the *Eleusinian* Solemnities they  
 “ worshipped *Pecten muliebre*, as the *Phallus* was revered in  
 “ the

Adulteries and Fornications, and that too, with their nearest Kindred \*.

And all these Things were done by them publickly in the Worship of their Deities, as Tokens of their Obedience and Veneration. *Deut. xii. 31. Every Abomination to the Lord which he hateth, have they done unto their Gods.*

These are the Things forbidden in the eighteenth of *Leviticus*, from the sixth to the twentieth Verse; to prevent the Children of *Israel* from committing the like enormous Crimes. Is it not shocking then to find, that notwithstanding these plain Prohibitions, the Fate of those Heathen Nations, and the many great and signal Favours Almighty God was pleased to bestow upon the *Israelites*, bringing them into that delightful, rich and plentiful Land, in the room of these wicked People, which he cast out of it for their execrable Wickedness, they should be guilty of all the same gross Enormities? And yet it is evident, this was the Case (as hath been already observed) — *They did according to all the Abomi-*

“ the Solemnities of *Bacchus*. *Necess. of Ch. Revel.* p. 226, 227. As for their Adultery, see *Ibid.* 272, &c.

See the Story of *Isis* and *Osiris*, in Mr. *Chandler's* Defence of the Prime Ministry and Character of *Joseph*, p. 512, 513, 514, and 570, 571.

\* Bishop *Jer. Taylor* tells us, from ancient History, That from the Time of *Nimrod*, among the *Persians*, lying with their Mothers, Daughters and Sisters, was made a Qualification for the Priesthood. *Duct. Dubit.* B. ii. Ch. 2. Sect. 23. P. 224.

Mr. *Jurieu*, a learned French Protestant Divine, well read in ancient History, tells us the same, and adds, that this Custom was carried by the *Magi* into *Egypt* and several other Countries. *General Hist.* p. 212. See also *Whitby* of *Ch. Revel.* p. 275. And the late Bishop of *London's* Second Pastoral Letter. p. 28.

*nations of the Nations which the Lord cast out before the Children of Israel †.*

If we attend to the Reproofs given them by the Prophets for their breaking the Laws God gave them in the 18, 19, and 20th Chapters of *Leviticus*, it may throw some further Light on this Matter. Concerning their Adulteries, the Prophet *Jeremiah* thus expresses it, *When I fed them to the full, then they committed Adultery, and assembled themselves in Troops in the Harlots Houses. They were as fed Horses in the Morning: every one neighing after his Neighbour's Wife; shall I not visit for these Things? saith the Lord\**. The Prophet *Ezekiel* was more particularly commanded (as I take it Chap. xxii. 2.) to shew her, (*viz.* *Jerusalem*) all her Abominations, that is, all her gross and heinous Crimes; which he did very concisely. He began with their bloody Idolatry, from the 3d to the 6th Verse. The same, I apprehend, that is forbidden, *Leviticus* xviii. 21. and xx. 2, 3, 4, 5. of which we took Notice before, p. 25. Next he proceeds, ver. 7.

To their *Undutifulness* to their *Parents*; forbidden, *Levit.* xix. 3. and xx. 9. See also, *Deut.* xxvii. 16.

And in the same Verse, their *Oppression* and *Vexing* of the *Stranger*, *Fatherless* and *Widow*; forbidden, *Levit.* xix. 33. and *Exod.* xxii. 21, 22.

And in the 8th Verse, their *Prophanation* of the *Sabbath*, forbidden, *Levit.* xix. 3, 30.

† 1 *Kings* xiv. 24.

\* *Jer.* v. 7, 8, 9.



The 9th Verse mentions, *Tale-bearers* to shed the *Blood* of their Neighbours; forbidden, *Levit.* xix. 16.

He proceeds thus, *In thee they eat upon the Mountains, in the Midst of thee they commit Lewdness.* This (if I mistake not) is pointed against their obscene and unnatural *Crimes* prohibited, *Levit.* xviii. 22, 23. (which they practised as Sacred Rites in their idolatrous Worship) referred to, 1 *Kings* xiv. 23, 24. and 2 *Kings* xxiii. 7. And herein before treated of, p. 25, 26. For the Word זמה, which is here translated *Lewdness*, and in the former Translations of the Bible, *Abomination*, and in *Leviticus* xviii. 17. and xx. 14. is rendered *Wickedness*, signifieth more than *Wickedness* \*, viz. “An execrable and detestable Degree of “Wickedness.” as I shall have Occasion again to observe.

What follows next relates more particularly to the Case in hand, Ver. 10. *In thee have they uncovered their Father's Nakedness.* You see this is the Sin expressly forbidden in *Levit.* xviii. 7.

Then he proceeds to mention the Sin prohibited in the same Chapter, Verse the 19th, taken Notice of before, p. 26.

Ver. 11. He comes to their gross Adultery expressly prohibited, *Levit.* xviii. 20. which was then become so common among them, observed before, p. 29. from *Jeremiah* v. 7, 8, 9.—And

\* Bishop *Patrick* on *Levit.* xviii. 17. and the Assembly's Annot. on the same Text.

proceeds to their most infamous Practices of debauching their near Kindred, particularly forbidden in *Levit.* xviii. 8, 9, &c. The whole Verse in that Translation of the Bible, which was in common Use before our present Translation stood thus—*Every one hath committed Abomination with his Neighbour's Wife, and every one hath wickedly defiled his Daughter-in-law; and in thee hath every Man forced his own Sister* \*.

But in our present Translation this Text is greatly altered. It is there rendered thus—*And one hath committed Abomination with his Neighbour's Wife, And another in thee hath lewdly defiled his Daughter-in-law, And another in thee hath humbled his own Sister*—You see here the universal Terms *every one* are changed into the particular Terms *one* and *another*, contrary (I think) to the plain Sense of the *Hebrew* ואֶחָד, contrary to the vulgar *Latin*, and to its rendering in all our old *English* Translations of the Bible †, and also contrary to the rendering of it in other Places in the same Translation. In this Text the Word ואֶחָד occurs three times. In the first Place instead of *every one*, it is rendered *one*; and in both the other Places (without the least Shadow of Reason, as far as I can perceive) *another*: But the Authors of this

\* *Ezek.* xxii. 11.

† In *Tindal* and *Coverdale's* Translation of the Bible, printed in the Year 1535, it was rendered *every one*; so it was in *Matthews* of 1537. and in the Great Bible of 1539; and in the *Geneva* Translation of 1560; in *Bishop Parker's* of 1568; and as far as I have been able to learn, in all the *English* Translations of the Bible, ever printed before that now in use.

Translation in the Margin, with a Note of Reference, hath also signified to the Reader that it may be rendered *every one*.

It may be fit to observe here, that it must not be understood, as if every individual Person among them did it; but that those horrid Crimes of debauching their near Kindred, were become common among them: And, as hath been observed by the Learned\*, they likewise committed such shocking Debauchery, as religious Rites in their idolatrous Worship, which the *Canaanites* did before them; who were driven out of the Land, or destroyed, for such detestable Wickedness.

But besides this general Account, we have particular Instances of great and remarkable Persons, who brake some of those Laws: Let us here also take a View of them. The first I shall mention is, that of debauching or forcing a Man's own Sister: This horrid Crime *Amnon*, King *David's* Son, was guilty of, as is evident from 1 *Samuel* xiii. 11, 12, 13, and 14. for which he was put to death by the Means of *Abfalom* her Brother.

And yet *Abfalom* also was guilty of a most notorious Breach of another of those Prohibitions †, viz. defiling his own Father's Wives ‡, (those called Concubines in Scripture, were Wives ||) For which Crime, with that of rebelling  
against

\* See Mr. Pool's Annot. on *Ezek.* xxii. 11. and Chap. viii. 14.

† *Levit.* xviii. 8.

‡ 2 *Sam.* xvi. 21, 22.

|| " After the Phrase of Scripture, a Concubine is an honest  
" Name,

against his Father, he also (by the righteous Providence of God) came to a shameful End \*.

*Reuben* (*Jacob's* eldest Son) was guilty of the like Crime before those Laws in *Leviticus* were given † ; but it was a Sin in him notwithstanding that ; for it was a Transgression of the primary Law of Nature ; and accordingly it was resented by his Father, and for which he lost his Right of Primogeniture †.

And it was for a Crime of a like Nature (tho' in some Circumstances different) that the Apostle *St. Paul* reprov'd the *Corinthians* ||.

We have likewise a remarkable Instance in the New Testament of a great Man's transgressing another of those Laws §, not much unlike the last mentioned, saving only in the Difference of Relation, *that* being Adultery with a Father's Wife, and *this* with a Brother's \*\*.

*Object.* But both these last mentioned Instances have been often produced by Way of Argument against *Marriage with near Kindred*, on Supposition they were Instances of Persons reprov'd under the Gospel Dispensation for marrying such : Tho' when rightly understood they will be found to be nothing at all to the Purpose. Let us examine them.

“ Name, for every Concubine is a lawful Wife.” Vid. *Homily, entituled, An Information for them that take Offence, &c.* Part 1<sup>st</sup>.

“ Certain it is [said Bishop Patrick] such Persons were real Wives ; and it was Adultery in any other Person that lay with them, but they who had married them. *Patrick's Commentary on Judges xix. 2.*

\* 2 Sam. xviii. 14, 15.

† Gen. xxxv. 22.

† Gen. xlix. 4. 1 Chron. v. 1. || 1 Cor. v. 1. § Lev. xviii. 16. and xx. 21. \*\* Matth. xiv. 3. Mark vi. 17. and Luke iii. 19, 20.



St. Paul's Words are ; *It is reported that there is Fornication among you, and such Fornication as is not named amongst the Gentiles, that one should have his Father's Wife* \*.

By having the Father's Wife here, is not meant marrying the Father's Widow (as many seem to think) but taking the Father's Wife from him to his great Wrong, and adulterously living with her in his Father's Life-time ; as is evident from 2 *Corinthians* vii. 12. † in which Commentators are generally agreed.

If the Apostle had meant it of marrying the Father's Widow, he would not have said it was *such Fornication as was not named amongst the Gentiles* : For, marrying the Father's Widow was not only named but allowed, and frequently practised at, and before that time by many Gentile Nations in the Neighbourhood of the Land of *Canaan* || ; which I take to be another undeniable Proof that the Fornicator's Crime

\* 1 *Cor.* v. 1. † 2 *Cor.* vii, 12. *Wherefore tho' I wrote unto you, I did it not for his Cause that had done the Wrong, [i. e. the Fornicator mentioned 1 Cor. v. 1.] nor for his Cause that suffered Wrong [i. e. the Father of the Fornicator who was injured by his Son's Wickedness, &c.]*

|| It is observed by Bishop *Jeremy Taylor*, that “ in *Syria* “ and the *Pontick* Kingdom, before his [St. Paul's] Time, it [viz. marrying the Father's Widow] “ had been named and “ practised and passed into a Law, and yet that Kingdom consisted of two and twenty Nations of different Languages.” *Duct. Dubit.* l. 2. c. 1. r. 1. Sect. 9. p. 174.

*Arabia* lies on the other Side of the Land of *Canaan*. And Dr. *Hammond* tells us, “ Among the ancient *Arabians* it [viz. marrying the Father's Widow] “ was used, and the Custom so “ described by *Al. Mostratraf*, *Ebnol. Arbir*, &c. that when a “ Woman was left a Widow, or put away by the Husband,

“ the

Crime here mentioned was not marrying the Father's Widow, but adulterously living with his Wife.

The other Instance is that of *Herod* with *Herodias*. The Case is thus related by St. *Matthew* §. *Herod had laid hold of John, and bound him, and put him in Prison for Herodias's Sake, his Brother Philip's Wife. For John said unto him, it is not lawful for thee to have her.* This hath been alledged as an Evidence of the Unlawfulness of marrying of a Brother's Widow. But that Notion will be sufficiently confuted, by only relating the true State of the Fact, as given us by Dr. *Whitby* \* from *Josephus*, and the *Old Jewish Chronicles*, which in short was as followeth. *This Herod was married to the Daughter of Aratas King of Petrea; yet (in Breach of Faith with her, and Violation of the Marriage Covenant, she being then living, and his lawful Wife) he took away Herodias his Brother's Wife from him, and kept her as his own Wife: which was a most gross Act of*

“ the eldest Son should take her by Inheritance, and cast his  
 “ Garment over her as a Sign of it; or if he would not, then  
 “ the next Heir: And so the Son, they say, succeeded to  
 “ the Father's Bed, as well as Wealth, by Inheritance.—And  
 “ such there were of the Tribe of *Banikais*, who, three of them,  
 “ one after another, had married his Father's Wife. Now it  
 “ was a Custom among the *Arabians*, that when any Man was  
 “ separated from his Wife by Death or Divorce, his eldest Son,  
 “ if he wanted her, cast his Garment upon her; that is, took  
 “ her to Wife; or if he wanted her not, one of his Brothers  
 “ married her.” Dr. *Hammond's* Annot. on 1 Cor. v. 1.

§ *Matth. xiv. 3, 4.*

\* *Whitby* on the same Text.

Adultery. Therefore (as Dr. *Whitby* rightly observes) *John the Baptist* might well say, *It is not lawful for thee to have her.*

There are some other Objections that may be supposed to lie against my Notion of these Laws, which I will now proceed to consider.

*Object.* 2. The *Jews* (to whose Forefathers the Laws now under Consideration were particularly given) must be supposed to understand their own Laws, and they took them to be Prohibitions of Marriages with the Persons therein mentioned; therefore we ought to take them in that Sense.

*Answer.* There is no Reason (that I can find) to think that the *Jews* took those Laws to be Prohibitions of Marriages with near Kindred, till since the Time of their Royal Prophet King *David*, but great Reason to think the contrary †. And after that Time they fell into the most detestable Idolatry (as has been already shown) and before the Reign of *Josiah* King of *Judah* (which was more than six hundred Years before the Time of our blessed Saviour) it seems, they had forgotten what their Law was, (*Hosea* iv. 6. 2 *Kings* xxii. and xxiii. And 2 *Chron.* xxxiv. 18. &c.) no Wonder then if they had forgot the true Sense of it.

† Nay, it is more probable they never took them for Prohibitions of Marriages till after the Times of their Prophets: It is not evident to me, that they generally took them in that Sense, till since the Times of our blessed Saviour, and the Apostles, when they entertained the most absurd Notions concerning them.

All the *Jewish* traditional Books were composed long since the Times of their Prophets ; most of them since our Saviour's Time \* : What Authority, therefore, can they be of ?

Our blessed Lord himself, when here on Earth, observed that the *Jews* by their Traditions transgressed the Commandments of God, and made them void and of no Effect †. No Regard can be therefore due to such Traditions †.

*Object. 3.* But there were a Sect among the *Jews*, commonly called the *Karrites*, who rejected their Traditions, and those also understood these Laws as Prohibitions of Marriages

\* Mr. *Pool* tells us, that “ all the *Jewish* Writers which are now extant, lived and wrote since Christ's Time ; when the Doctors of that People were very ignorant of many great Truths, and of the plain Meaning of many Scriptures.” Annot. on *Job* xix. 25. See also Dean *Prideaux's* Account of the *Jewish* Writers. Connect. Part. II.

† *Matth.* xv. 3—6. And *Mark* vii. 8 to the 13.

‡ Mr. *Moses Lowman*, in his Dissertation on the Civil Government of the *Hebrews*, from Page 151 to 158, hath observed, that in several Cases the Authority of the *Talmudist* and *Rabbinical* Writers is very low with learned Men : In his ninth Chapter concerning the Senate of *Israel*, Page 155, he saith, “ The *Rabbinical* Writers have greatly darkened, and even confounded this Question ; they have given us their own chimerical Imaginations, instead of real historical Facts. For though they could have no other good Foundation to build upon but the Scripture History, yet they have given us such an Account of their Sanhedrim, as the Senate and supreme Court of the *Hebrew* Nation, as is no where to be found in the Scripture History, and is in many Things absolutely inconsistent with it.” Any one that has a mind to know what Notions the *Jewish* traditional Writers had concerning Marriages betwixt near Kindred, may find enough of their most absurd Assertions in Mr. *Jurieu's* general History of all religious Worship (both true and false) Vol. I. Chap. xxi. from Pages 200 to 212.



with near Kindred ; therefore we also ought to adhere to that Sense of them.

*Ans.* The *Karrites* were a Sect that sprung up among the *Jews* some hundreds of Years since the Time of our blessed Saviour (just as the Quakers sprung up among us) and as those *Karrites* rejected Tradition, they could know no more as to this Point than we can now. It would be as reasonable to appeal to the Opinions and Practices of the Quakers, in order to discover what the Doctrine of the Church of *England* is in the Case of Swearing before the Civil Magistrate in Matters of Truth and Judgment; as to appeal to the *Karrites* in this Case. I know no other Way that can be safely depended on to find out the true Sense of those Laws, but to search and examine in what Sense they were understood by the inspired Penmen, at, and since the Time they were promulgated, which is what I have endeavoured with the utmost Care to do; and for the more fully perfecting such Examination, shall be glad of the Aid and Assistance of any learned and honest Enquirers.

*Object.* 4. Is it not evident, from Chap. xviii. v. 17. (which is a Prohibition of uncovering the Nakedness of a Woman and her Daughter or Grand-daughter) when compared with Ch. xx. v. 14. (where the Punishment is added for taking a Wife and her Mother) that both relate to the same thing ? (since all the Difference is, one mentions the Mother first, and adds the Grand-daughter ; the other mentions the

Dat . . .

Daughter first \*, and omits the Grand-daughter.) And consequently that Marriage must be understood to be prohibited by the Phrase *uncover the Nakedness* in the 17th Verse of the 18th Chapter, and therefore likewise throughout the whole Chapter. And may not the same be also inferred from the 18th Verse next following of the same Chapter ?

And then (as Matches betwixt Kindred by Consanguinity are forbidden from the 7th to the 16th Verse, and the Women here prohibited are of Kin to the Man only by Affinity) may it not be further inferred from hence, that it is as unlawful to marry Kindred by Affinity as by Consanguinity : And that therefore it is no more lawful for a Man to marry his Wife's Sister than his own Sister.

*Ans. 1st.* I admit that it is probable those Texts, viz. Chap. xviii. 17. and xx. 14. do both relate to the same Thing, not only for the Reason mentioned in the Objection, but also because the heinous Nature of the Crime is prohibited in both Places by the same Word *נפח* which is translated “ *it is Wickedness,*” as before observed. But Bishop *Patrick*, in his Note on the Word, tells us, “ It imports more than “ *Wickedness.*” And another learned Commentator † tells us, it signifies, “ An execrable and

\* We have a like Instance in the tenth Commandment in the xx of *Exodus* ver. 17. the Neighbour's *House* is put before his *Wife* : In *Deuteronomy* v. 21. his *Wife* is put before his *House*, yet the Command is the same.

† See the Assembly's Annot. on *Leviticus* xx. 14.

“ detestable Degree of Wickedness ;” which Word no where occurs either in the said xviii. or xx Chapters, but only in these two Places ; for the Word which in the 17th Verse of the xx Chapter, is rendered *it is a wicked Thing* is תסר which is a Word of a much milder Signification than the Word ופה beforementioned. And as those Texts belong both to one Thing, it is reasonable to suppose, that by comparing them, the one may give Light to the other.

But then, *secondly*, it is very evident, that the marrying a Mother and Daughter, or Grand-daughter ; or a Daughter and Mother successively one after the *Death* of the other (which is generally understood by it) cannot be the Thing here prohibited. For it can be no greater Crime for a Man to marry his Mother-in-law or Daughter-in-law, than his own Mother. But it is plain the Crime here prohibited is a greater one, it being set forth by a more emphatical Word, as a high and extraordinary Wickedness : And the Punishment to be inflicted for the Breach of it, the most severe of all the Punishments mentioned in the *Levitical* Law, *viz.* Burning with Fire : And that not only the Man and Woman that might be supposed to be guilty of this Sin after the Mother or Daughter’s Death, but *he* and *they*, both the Man, Mother and Daughter, or Grand-daughter ; which is a Demonstration that it must be for something done by them whilst they were all living : So that if Marriage is meant here, it must be the marrying the Mother

ther and Daughter, or Grand-daughter, both being living and consenting to it. But neither is it likely that this is the Meaning of the Precept : For let it be remembered (as hath been already observed) that the Things here forbidden were the Abominations of the *Egyptians* and *Canaanites*, their *Customs* and *Ordinances*, such as they practised in, or with relation to their Religious Worship \*. But it is not likely that marrying a Mother and Daughter, or Grand-daughter together, was a Thing commonly practised by those People (or any People) much less that it was done by them as an Act of Worship, or in the Service of their Gods, (tho' the defiling of them might be so :) For had that been the Case, there would have been no need to have added the most dreadful of all Deaths, as a Punishment for the Breach of it. For it is not probable any Woman would be so fond of taking her Daughter as a Copartner with her in her Marriage-bed ; or that any Daughter would be so fond of her Mother in the same Case, as to make it needful to inflict such a Punishment to deter them from it.

*But if neither of these Things is to be understood here, what can be the Meaning of the Prohibition ?*

If I can give no satisfactory Answer to this Question, it will by no means follow from hence, that the Words *uncover the Nakedness* must here signify Marriage, (and much less in other Parts of

\* Deut. xii. 31.



those Laws) tho' I think what hath been already said is sufficient to show the Improbability of the Words being used in that Sense here. It was observed before, p. 27. that when the Phrase *uncover the Nakedness* is used for carnal Knowledge, then always *Adultery* or *Fornication* is to be understood by it. The Words of the 17th Verse of the xviii. Chapter are : *Thou shalt not uncover the Nakedness of a Woman and her Daughter, neither shalt thou take her Son's Daughter, or her Daughter's Daughter, to uncover her Nakedness.* Now according to the fore-mentioned Sense of the Words, this must be a Prohibition of debauching those Persons. In the 14th Verse of the xxth Chapter, the Words are, *If a Man take a Wife* and her Mother, &c. it hath already been observed, that the Word rendered *Wife* signifies Woman in general, whether married or unmarried ; it is the Word which is translated *Woman* in the 17th Verse of the xviii Chapter, as also in the 18th and 19th Verses of the same Chapter, and in the 18th Verse of the xx Chapter ; and there is as good Reason to translate it *Woman* in this 14th Verse, as there is for rendering it so in the 17th Verse of the xviii. Chapter.

This 14th Verse, therefore, I think should be translated thus, *If a Man take a Woman and her Mother, &c. viz. to uncover their Nakedness,* (that is) to debauch them. For the Words, *to take a Woman*, may as well signify to take her to debauch her, as to take her to Wife : So we read *Gen. xxxiv. 2.* concerning *Dinah*—And when *Shechem* the Son of *Hamor*,—saw her,

her, *he took her*, and lay with her and defiled her. This I think is clear.

But then perhaps it may be asked, what Need was there of such a Prohibition as this ? || and of adding too, a more severe Punishment for the Breach of it, (*viz. burning with Fire*,) than for the Breach of any other of these Laws ?

It is observed in the Notes, p. 28. from an ancient History cited by Bishop *Jeremy Taylor*, and Mr. *Jurieu*, that from the Time of *Nimrod*, among the *Persians*, lying with their Mothers, Daughters, and Sisters, was made a Qualification for the Priesthood\*. And as the *Canaanites* were

|| Bishop *Patrick* in his Commentary on the 23d Verse of the 18th Chapter, hath started the like Question concerning the Crime of Bestiality there prohibited : His Words are, “ Some  
“ are apt to say, What Need was there of such Prohibitions ?  
“ when it is so monstrously unnatural to mix with Creatures of  
“ a different Species from us, as all Beasts are. But such Per-  
“ sons (says he) do not understand, that this was not only  
“ practised in *Egypt* (against whose Doings he cautions them, v.  
“ 3.) but was also made a Piece of Religion :—Goats, which  
“ were there also worshipped, lay with Women—openly—in  
“ the View of all ;” for the Proof whereof he cites Authors of  
undoubted Credit ; and then adds, “ How long this beastly Cus-  
“ tom had been among them none can tell. But these Words  
[which he had cited] “ import that then it was notorious ;  
“ and so far from being kept secret, that they rather made  
“ an Ostentation of it : Which I look upon [adds he] as an  
“ Argument that this had been a very old Practice, otherwise  
“ they would have blushed at it.”

\* Whatsoever is made a Qualification for any Office must be done so publickly, as to be capable of being proved by *Witnesses* : (This is the Case at present among us, as to the *Sacramental Test* ;) and the Crime prohibited by this Precept, must likewise be of such a Nature, as to be capable of being so proved : And so must all the other Crimes mentioned in these Laws be, where Death is the Penalty : For without two or three Witnesses no Person by the *Levitical Law* was to be put to Death. *Numb.* xxxv. 30. *Deut.* xvii. 6. and xix. 15.

much

much addicted to the most abominably idolatrous Customs, there might be some Custom of a like Nature among them, tho' now unknown to us, which seems probable from the Prohibition itself: For it is observable, that this Prohibition, as above explained, is an express Prohibition of that most shocking Custom: [For he that debauches his Mother, and Sister, debauches a *Woman and her Daughter*; and he who debauches his Mother and his Daughter, debauches a *Woman and her Grand-daughter*.]

Now, since to be a Priest in *Egypt* (from whence the Children of *Israel* were brought forth) was to be a Man of great Dignity; (for the Priests were Nobles and Privy Counsellors in those Countries\*,) it is no unreasonable Conjecture to suppose that People might be aspiring after Grandeur then, as well as in latter Times; and, therefore, that not only the Man himself might desire it, but his Mother, Sister, and Daughter might permit it to be done, to qualify him for such Preferment, which might be a Cause of their Advancement also. The Temptation, therefore, being so *great*, and the *Wickedness* so *heinous*, no Punishment could be too severe to deter them from it.

The 18th Verse in the Objection mentioned, is another very difficult Text; many learned Commentators have tried their Skill on it, and have scarcely been able to satisfy themselves as to its true Sense.

\* Mr. Chandler's Defence of the Prime Ministry and Character of *Joseph*, p. 403, 419, 421, 422, and 424.

This,

This, however, I think is plain, that whatever Sense is put upon it, the Words, *uncover her Nakedness* there, cannot signify Marriage. Mr. *Ainsworth*, who gave us a more literal Translation of the *Hebrew* Text, than that in our Bible now in use, rendered it thus, *And a Woman unto her Sister thou shalt not take, to vex (her) to uncover her Nakedness upon her in her Life.* Many learned Men have thought it to be a Prohibition of Polygamy ; but that Sense of it is rejected by the best Commentators \*.

Mr. *Pool* observed, from a learned Man, which he doth not name, “ That this Text “ doth not simply forbid the taking one Wife “ to another ; but the doing it in such a Manner, or for such an End, that he may vex, “ or punish, or revenge himself of the former : “ which,” (says he) “ probably was a common Motive among that hard-hearted People “ to do so.” Bishop *Patrick* and Bishop *Kidder* say, there is the like Reason to understand the Word *Sister* properly in the common Acceptation of it in this Place, as the Words, Daughter, Mother, &c. in other Places in this Chapter.

If the Observations of those learned Commentators be right, may not the Sense of the Text be, “ *Thou shalt not take thy Wife’s Sister “ and debauch her in thy Wife’s Presence, or before her Face, thereby to vex, or be revenged “ of thy Wife,*” that being the most effectual Way to vex her.

\* Bishop *Patrick*, Bishop *Kidder*, &c.



But be it as it will, surely it is altogether unreasonable to make the dark and obscure Parts of Scripture a Key to expound those that are plainer. And as to the Consequence drawn at the End of the Objection, if what hath been before observed be of any Force, the whole Foundation of it is destroyed. But if all I have said on those Texts in the Objection mentioned should stand for nothing, and it could be proved that the Phrase, *uncover the Nakedness*, did indeed signify Marriage (the contrary to which, I think, hath been fully shewn) yet even, in that Case, the Consequence would not hold good. For the Persons in the Objection mentioned are in the ascending and descending Line ; therefore, to argue from thence, that because Kindred by Affinity in the ascending and descending Line are forbidden to marry, therefore collateral Kindred are so, is very weak and inconclusive.

*Object. 5.* If Marriage with near Kindred is not the Thing intended to be forbidden in the xviii<sup>th</sup> and xx<sup>th</sup> Chapters of *Leviticus*, what Need could there be, after the general Prohibition of defiling all such, to proceed so particularly to the Kindred following, *viz.* the Father, Mother, Father's Wife, Sister of the half Blood, and of the whole Blood, the Son's Daughter, and Daughter's Daughter, the Father's Sister, and Mother's Sister, the Daughter-in-law, the Brother's Wife, the Father's Brother's Wife, &c. Doth not the Particularity of those Precepts clearly shew, that Marriage  
with

with the Persons there named, is the Thing chiefly intended to be prohibited by them?

This Objection contains the most plausible Argument, and seems to carry greater Weight with it, in Opposition to the Notion I have advanced, than any other that ever yet was, and, I think, that can be offered in Opposition to it. And I am fully persuaded, it is this Consideration, together with the Prejudice of Education, that has kept so many great, learned and worthy Men in that Way of thinking: Yet specious as it is, I doubt not but it will admit of a clear and full Answer. I shall endeavour to obviate the Force of it by shewing:

First, That it is usual in the Law of *Moses* to prohibit expressly some particular aggravating Circumstances of some Sins, on Account of their heinous Nature, the Danger People may be under of being tempted to the Commission of them, and the dreadful Consequences that must attend them if committed; notwithstanding they are included under some general Prohibition, as many other Sins of a like kind are, that are not particularly prohibited.

Secondly, That the defiling of near Kindred are Sins of that Nature, and therefore fit to be particularly prohibited on that Account.

First then, I am to shew, that it is usual in the Law of *Moses* to prohibit expressly some particular Circumstances of some Sins, on account of their heinous Nature, &c. notwithstanding there are many others of the like kind also unlawful, tho' not so particularly prohibited.

bited. I shall instance, first, in the Case of profane Cursing. I suppose it will be allowed that all *profane Cursing* is sinful ; yet because it is more heinous to curse such as ought to be *feared, revered, and honoured*, than to curse others ; therefore those are particularly prohibited, tho' others are omitted : Thus it is prohibited to *curse* their *Parents*, and that under Pain of Death \*, and their *Rulers* † ; also they were prohibited to curse the Deaf ‡.

Secondly, It will also be allowed, that to *afflict* or *oppress* any Persons is sinful ; yet because it is more barbarous with respect to some than others, therefore the oppressing of such is particularly forbidden : as to oppress a *Stranger* §, a *Widow*, and *Fatherless Children* ||, and a hired *Servant* that is poor \*\*.

Thirdly, They were commanded to do no Unrighteousness in Judgment †† to any Persons ; yet because it was a more aggravated Crime to wrest or pervert Judgment, by doing Wrong to such as are less able to defend themselves ; therefore it is in that Case expressly and particularly forbidden. As to wrong the Poor |||, by perverting Judgment, the *Stranger*, *Fatherless*, and *Widow* ††.

Fourthly, They were particularly commanded to do no Unrighteousness in *Measure* §§. And yet after this *two Measures* were par-

\* *Exod.* xxi. 17. *Levit.* xx. 9.

† *Exod.* xxii. 28.

‡ *Levit.* xix 14.

§ *Exod.* xxii. 21. and xxiii. 9.

|| *Exod.*

xxii. 22.

\*\* *Deut.* xxiv. 14.

†† *Levit.* xix. 15.

||| *Exod.* xxiii. 6.

†† *Deut.* xxiv. 17.

§§ *Levit.* xix. 35.

particularly

ticularly mentioned § : *A just Ephah and a just Hin shall ye have.* They had other Measures, which by the general Command to do no Unrighteousness in Measure, they were obliged to have just. But because those two particularly mentioned were in more common Use among them, they were under *greater Temptation* to have those unjust than others ; therefore this is particularly prohibited.

Fifthly, The making any Sort of Idol Gods to worship was expressly forbidden. *Thou shalt have no other Gods before me. Thou shalt not make unto thee any graven Image ||. Turn ye not unto Idols, nor make to yourselves molten Gods ; I am the Lord your God.*

And yet after the general Command, some Idols are particularly prohibited \*, *Ye shall not make with me Gods* (that is, Idols) *of Silver, neither shalt ye make unto you Gods of Gold.* It was as unlawful by virtue of the general Command to make Idols of *Brass, Iron, Wood, or Stone.* But because Idols of *Gold and Silver* were more *pompous*, and more generally esteemed than the others, and on that Account they were more likely to be tempted to worship these than others, therefore these are particularly prohibited, while the others are omitted. I could produce many more Instances of the like Nature to prove this Point, but I think

§ *Exod. xx. 3, 4.*  
*Exod. xxxiv. 17.*

*Deut. v. 8.*

|| *Levit. xix. 4.*

\* *Exod. xx. 23.*

E these



these already mentioned are sufficient. I shall therefore proceed,

Secondly, to shew, That the defiling near Kindred is a *Sin* of a more *heinous Nature*, and must be attended with more dreadful Consequences than the defiling other People, (to which they were yet very likely to be tempted by the *evil Examples* of those *Nations*, as well as by the *frequent Opportunities* that must offer for committing this Sin;) therefore it was as fit to be particularly prohibited (tho' before included in a general Command) as the others abovementioned.

It is evident, that near Kindred, such as are of the same House (even by the Ties of Nature) are much more obliged to aid, assist, direct and admonish one another, to save and prevent each other from such Evils as they are likely to be tempted to, than others are; inso-much that under the Christian Institution, he that neglected these Duties is said to be *worse than an Infidel* \*. Perhaps it may be said, that these Words of the Apostle have respect there to the Sin of a Man's neglecting to take due Care for the temporal Welfare of his Family; and I doubt not but this was the more immediate and direct Intent of them. But certainly not to take Care of the Souls of his Household must be more heinous; as particularly not to take Care of their Purity and Chastity. What greater Injury can be offered to a virtuous Woman, than instead of preserving, to vio-

\* 1 Tim. v. 8.

late her Honour, and debauch her? The Sons of *Jacob* highly resented this, when done by *Shechem* to *Dinah* their Sister \* ; as did *Abso- lom*, when *Amnon* defiled *Tamar* his Sister †.

How great then must the *Crime* be, when such as by the Ties of *Nature* and *Blood*, are peculiarly obliged to defend one another from such Injuries, become themselves the Authors of them. And when it is considered that the Injury is done to Persons of the same Family, to Friends, it adds a peculiar Sting to the Remembrance and Recollection of it. See how the Royal Prophet *David* speaks of an Injury done him by one that ought to have been his Friend : *It was not an Enemy that reproached me, then could I have borne it,—but it was thou, a Man, my Guide and mine Acquaintance ‡*. Injuries from such press heaviest upon the Mind, and are of all others the most difficult to be borne.

From hence then it plainly followeth, that as the *Crime* in defiling the Kindred of a Man's own House is *greater* than in defiling *others*, because it is generally like to be attended with *more shocking* Consequences ; as the Temptations to it were strong from the frequent Practice of it in the Nations around them ; and in Consideration of the numerous Opportunities that may offer in this Case for the committing that Sin.

So if any *Crimes* could deserve to be specified in *particular Prohibitions*, after having been included in a general one, it must be that

\* Gen. xxxiv. 5, 7, and 26.

† 2 Sam. xiii. 13, 28.

‡ Psal. lv. 12, 13.

of defiling our *near Kindred* ; which is accordingly drawn out into several Cases, and in each distinctly forbidden.

Thus have I proved (if I mistake not) that Marriages betwixt *near Kindred* are not prohibited by the *Mosaic Law*, and have considered and answered the Objections that seem to lie against my Notion.

Yet before I proceed to consider what the Law of Nature teaches in the Case, I shall make some farther Observations from Scripture, for the clearer and more full Confirmation and Illustration of the Point, by shewing, that *Marriages betwixt near Kindred* are not only *not prohibited* by the *Mosaic Law*, but were *well approved of*, and in one Case *expressly commanded* there.

I will begin with the Case of the Daughters of *Zelophehad*, where we find five Brothers married five Sisters, all of them Brothers Children.

This happened in the Time of *Moses*, by whom the Laws we have been explaining were given, and under his Inspection and Approbation [*Numb. xxxvi. 10, 11.*] *Even as the Lord commanded Moses, so did the Daughters of Zelophehad: For Mahlah, Tirza and Hoglah, and Milcah, and Noah, the Daughters of Zelophehad were married unto their Father's Brother's Sons.*

So we find, *Judges i. 13.* that eminent Servant of God, *Caleb*, gave *Achsah* his Daughter to

to *Othniel the Son of Kenaz, his younger Brother, to Wife.*

And *Ruth* said unto *Boaz* (*Ruth* iii. 9.) *spread thy Skirt over thine Handmaid, for thou art a near Kinsman.* In answer to her, *Boaz* said, (v. 12.) *It is true, that I am thy near Kinsman; howbeit, there is a Kinsman nearer than I.* And in the next Verse, he promised her, that if that Kinsman would not marry her, he would. For that I take to be the Meaning of his Words. And we find, in Fact, he performed his Promise.

Hence it is evident, that the being *near of Kin* was then made a *Reason* for *Marriage*, and not an *Objection* against it. And as the Kindred there mentioned was by Affinity; it may be further inferred, that the nearer any collateral Kindred were, they were then esteemed more fit to be joined together in matrimony.

And as to collateral Kindred by Consanguinity; tho' it is probable that Marriage betwixt the nearest of them, (viz. *Brother and Sister*,) was unusual; yet from the Story of *Amnon* and *Tamar*, it is highly probable that such a Marriage was not then deemed *unlawful*: For surely, if these Laws in *Leviticus* had been then taken for Prohibitions of Marriages with near Kindred, King *David*, whose *Delight* it was to study and *exercise himself in God's Law Day and Night*, must have been well acquainted with them. And as there are therein Commands to teach the Law *diligently unto their Children*,



&c. without Doubt the *Royal Prophet* did it; therefore if there had been therein any Prohibitions of Marriages with *near Kindred*, his Children certainly must have known it. And if those Laws had been then taken for such Prohibitions, as *Tamar* could not have been *ignorant of it* herself, so she must likewise have known that her *Brother Amnon* also knew it. But by her Words to him, *I pray thee speak unto the King, for he will not withhold me from thee \**, viz. in Marriage; it is plain she knew of no Law against such a Marriage; from whence it is, therefore *highly probable* these Laws were not then taken in that Sense.

But that which puts it beyond all Doubt, is God's *absolute Command* † to marry the *Sister-in-law*. I take this to be a full Demonstration that the Law relates not to Marriage.

For certainly Almighty God, who is infinitely holy, and hates all Manner of Impurity, and every thing that has any Tendency to it, would not have given such a Command, if there had been either the least *Impurity* or *Unfitness* in such a *Marriage*.

In order to darken the Point, this express Command has been represented by some to be only an Exception to the Prohibition of *Leviticus* xviii. 16. which they misunderstood for a Prohibition of *marrying a Brothers' Widow*, supposing it to be like the Allowance that *Moses* gave the *Israelites* to divorce their Wives ‡.

\* 2 Sam. xiii. 13.

† Deut. xxv. 5.

‡ Deut. xxiv. 1.

But the Cases are quite different ; in one it is said, *When a Man hath taken a Wife; and married her, and it come to pass that she find no Favour in his Eyes, because he hath found some Uncleannefs (or Matter of Nakednefs) in her, then let him write, &c.* which it is plain was but a *Permission*, according to our blessed Saviour himself. *Matth. xix. 8.*

But in the other Case (*Deut. xxv. 5.*) the Words are ; *If Bretheren dwell together, and one of them die and have no Child, the Wife of the Dead SHALL NOT marry without unto a Stranger : her Husband's Brother SHALL go in unto her, and take her to him to Wife ;* and if he would not, he was not only to be then treated contemptuously, but was also to bear a perpetual Reproach for his Refusal, as appears from the 7, 8, 9, and 10th Verses. So that it is plain this was an *exprefs Command* for Marriage in the Case there mentioned betwixt *Brother and Sister-in-law*. They were at Liberty, by the *Mosaic Law*, to marry, if the Brother, at his Death, had left Children, as I think is plain from what hath been proved in the former Part of this Discourse : But if he left no Child, the Brother was under an *exprefs Command* to take her to Wife.

By this Law, and the Instances mentioned under the second general Head, Men of *Learning* and *Judgment* have been convinced, that there could be no Immorality in such Marriages : For tho', thro' Prejudice of Education, and for Want of a more free Examination of the

Case, they have generally taken the Laws we have been considering to be Prohibitions of Marriages betwixt near Kindred ; yet, because they have been convinced as above mentioned, that *such Marriages* could not be contrary to the Law of Nature, they therefore concluded that they were not *moral* but only *positive* Prohibitions.

And as to their being spoken of as the Abominations of the Heathens, they (*some of them*) have been inclined to restrain it to the most abominable Things mentioned in those Chapters, and not to the Marriages in general, which they thought to be there prohibited. The learned *Grotius* was of this Mind.

But in Answer to this, *Dr. Hammond* well observes, — “ how ill a Precedent this is, “ and how *dangerous* a Way of *interpreting*, to “ *restrain*, where the *Law* doth so distinctly “ *not restrain* ; to *except* some *Particulars*, “ where the Words are repeated over and “ over in the most *unlimited comprehensive* “ Form of *Universality* : *Defile not yourselves* “ *in any of these* ; for in *all these* the Nations, “ *&c.* ver. 24. And *ye shall not commit any of* “ *these*, ver. 26. *for all these Abominations, &c.* “ ver. 27. And *whosoever shall commit any of* “ *these Abominations*—ver. 29. And so again, “ Chap. xx. 23. *The Nations committed all* “ *these*.

“ It is not possible [says he] Words should “ be more providentially formed to exclude “ all *Exception or Restraint*, and to define “ every

“ every of the forenamed Practices to be *Abominations* (all of them) for which the *Canaanites* were cast out \*.”

And therefore the learned Doctor (who also thought that such Marriages could not be Transgressions of the *Law of Nature*, but only of some *positive Law*,) concluded they were prohibited by some positive Law, long before the Law of *Moses* was given, viz. to the Sons of *Adam* or *Noah*, and in them to all Mankind. But what I have observed under the second general Head, is a clear Confutation of that Supposition †.

For if God had prohibited Marriage betwixt near Kindred, by a Law given to the Sons of *Adam* or *Noah*, and in them to all Mankind, by Means whereof they became so *abominable* in the Heathens, as to provoke God to cast them out of their Land on that Account, surely such Marriages would not have been contracted by the *best* of God's own People, and that without Blame too. It is, therefore, an unreasonable and absurd Supposition.

This Law then for the Marriage of Brother and Sister-in-law, in the Case abovementioned, compleats the *Demonstration*, that it was not *marrying with*, but the *defiling of near Kindred*, the Laws which we have been considering were designed to prevent ; that is, upon Sup-

\* *Hammond's* Letter of Resolution of Six Queries in the First Volume of his Work, Q. 2d. Sect. 38. † See p. 5, to 8.



position they *are moral Laws* ; and if they are not, they do not oblige us as Christians \*.

But were there then no Marriages *forbidden in Scripture* ? Yes ; I have observed under the first general Head, that at the original Institution of Marriage by Almighty God, he commanded them, with Relation to Marriage, to *leave Father and Mother*, by which I think it is very plain Marriages between *Parents and their Children were prohibited*, and consequently all Marriages in the ascending and descending Line. And as to Marriages betwixt Kindred, (if I mistake not) this is *all that is prohibited in the Holy Scriptures* : But some other Marriages were there clearly forbidden to the Children of *Israel*, and that not in dark and doubtful Expressions, but in such plain Words as cannot be mistaken. — *Thou shalt make no Covenant with them*, [*viz. the Canaanites*, and other Inhabitants of the Countries that God drove out before the Children of

\* If they are not *Moral Laws*, they stand on the same Foot with those Laws in *Leviticus*, Chap. xi. that prohibit the eating divers Kinds of Meats, as *Hares, Swine, &c.* *Their Flesh shall ye not eat, and their Carcase shall ye not touch.* And the Law that forbids wearing a Garment of Linnen and Woollen, *Lev. xix. 19.* And the rounding the Corners of their Heads, and marring the Corners of their Beards, ver. 27. These Laws never obliged any People but the *Jews* only : and even as to them, to all of them that embraced the Christian Religion, it was abolished at our Saviour's Death. See Dean *Prideaux's* *Connections*, Part II. Preface ; and Dr. *Benson's Essay concerning the abolishing of the Ceremonial Law by the Death of Christ*, at the End of his Paraphrase and Notes on St. Paul's Epistle to *Titus*. The Learned are well agreed in this ; I mention it for the Sake of the Unlearned only.

*Israel.]*

*Israel.] Neither shalt thou make Marriages with them ; thy Daughter thou shalt not give unto his Son, nor his Daughter thou shalt take to thy Son* \*. You see this Law is so plain, that it is scarcely possible to mistake it, as the Laws of *Moses* generally were (tho' to us, at this Distance of Time, and by Alteration of Customs, it may not be so easy to find out the Reason for which some of them were given.)

And it is very evident they also broke this Law, and were severely reprehended for it †. *Ezra the Priest stood up, and said unto them, ye have transgressed, and have taken strange Wives to increase the Trespas of Israel. Now, therefore, make Confession unto the Lord God of our Fathers, and do his Pleasure ; and separate yourselves from the People of the Land, and from the strange Wives. Then all the Congregation answered, and said with a loud Voice, As thou hast said, so must we do.—We are many that have transgressed in this Thing.—Let all them which have taken strange Wives,—come at appointed Times, and with them the Elders of every City, and the Judges thereof, until the fierce Wrath of our God for this Matter be turned from us.*

‡ Again, *In those Days also saw I Jews that had married Wives of Ashdod, of Ammon, and of Moab : And I contended with them, and cursed them, and smote certain of them, and plucked off their Hair, and made them swear by God,*

\* Deut. vii. 2, 3.

† Ezra x. ver. 10, 11, 12, 13, 14.

‡ Nehemiah xiii. 23. ver. 25, 26, 27.

*saying,*

*saying, Ye shall not give your Daughters unto their Sons, nor take their Daughters unto your Sons, or for yourselves. Did not Solomon King of Israel sin by these Things?—Shall we then—do all this great Evil, to transgress against our God, in marrying strange Wives \*?*

Do we find any Thing like this with respect to Marriages betwixt near Kindred? Do we find any where in Scripture, that any were separated, or in the least blamed on that Account? Is there any Thing like it in the whole Bible? Shew me but one Instance, and I will give up the whole Point.

The quite contrary is the Truth. The being near Kin (as hath been already observed) is there † made an Argument for Marriage, and those that married their near Kindred are commended for it.

And (as Bishop *Jeremy Taylor* observed ‡) it was “ the most general Practice [of the *Israelites*] to marry their own near Kindred “ in their own Tribe.” And this Practice continued among them until after the Times of our blessed Saviour; as is evident from *Josephus* and other Histories. And not among the *Jews* only, but among several *Gentile Nations* also in the Neighbourhood of *Canaan*. “ Nothing has been more frequent in all Ages “ in the East” [said Mr. *Jurieu*] “ than Mar-

\* 1 *Kings* xi. 1, 2, 3, 4.

† *Ruth* iii. 9. *Numb.* xxxvi. 10, 11. *Tobit* i. 9. and Ch. iii. 15. and iv. 12, 13.

‡ *Duct. Dubit.* B. 2. C 2. §. 84.

“riages betwixt Brother and Sister §.” And Bishop *Jeremy Taylor* said,—“ That among the wisest Nations, some whom they esteemed the bravest Men, did this. *Cimon*, the Son of *Miltiades*, married his Sister, *Elpinice*, *Non magis amore quam Patrio more ductus*, said *Æmilius Probus*, not only led by Love, but by his Country’s Custom. So *Archetolis*, the Son of the brave *Themistocles*, married his Sister *Marasiptolema*; *Alexander*, the Son of *Pyrrhus* King of *Epirus*, married his Sister *Olympias*. *Mithridates* married his Sister *Laodice*. *Artemisa* was Sister and Wife to *Mausolus* King of *Caria*. So was *Sophrosina* to *Dionysius* of *Syracuse*. *Eurydice* to *Ptolemæus Philopater*. *Cleopatra* to *Ptolemæus Physcon*. *Arfinoe* to *Ptolemæus Philadelphus*.” — But I need not, [says he] bring particular Instances of *Egyptians*: For *Diodorus Siculus* affirms, that they all esteemed it lawful.” As he further tells us other Nations also did \*.

This then being the Case before, and even to the Times of our blessed Saviour (who could not but know all this) there was the

§ Critical History. p. 211.

\* Duct. Dubit. B. 2. Ch. 2. Rule 3. Sect. 25, 26. p. 226. I do not mention this, nor did the before cited learned Authors, to bring Marriages betwixt Brothers and Sisters again into Use; (their Opinions, as to that, may be known by what they added afterward in the same Books; as mine may from what I shall observe concerning it under the next general Head) but only to let the Reader know how the Case then stood as to Marriages betwixt near Kindred, among some of the *Gentiles*, as well as among the Children of *Israel*.



greatest Reason to expect, that if there had been any Impurity in such Marriages he should have shown it : It was his constant Practice to take all Opportunities to rectify the erroneous Opinions, and reprove the wicked Practices of his Followers. We have an Instance of this (among many others) in the Case of Divorce \*. And tho' it is certain, that the Case of Marriage betwixt Brother and Sister-in-law came before him †, yet we don't find he spake one Word against it.

Neither did the holy Apostles (who were sent by him, and to whom he gave the Spirit of *Truth*, to lead them into *all Truth* ; and who ‡ *kept back nothing that was profitable, but declared all the Counsel of God*) leave us one Line against Marriages betwixt near Kindred. No ! the greatest and most famous Prohibitors of such Marriages were a quite different Sort of People.

For Instance, *Alexander* the Great (as he is wont to be called) was a *very famous* Prohibiter of Marriages betwixt near Kindred ; for he did by a Law forbid such Marriages §. But what was his Character ? he was, as Dean *Prideaux* tells us, a Man noted for Robberies, Plunders, and Murders, and for the Destruction of Cities and Nations || ; and of some of

\* *Matth.* xix. the 3d to the 9th Verse. *Mark* x. 2.

† *Matth.* xxii. 24, &c. *Mark* xli. 19, &c. *Luke* xx. 28, &c. ‡ *Acts* xx. 20, 27. § *Prideaux's* Connect. Part I. B. 4. Anno 486. p. 226.

|| *Ibid.* Part I. B. vii. and viii.

the best of his Friends too, and that without any Provocation. “ Were all his Actions “ duly estimated” (says the learned Dean) “ he “ could deserve no other Character than that “ of the *Great Cut-throat* of the Age in which “ he lived †.

His Pride and Vanity was so great, that by Corruption he got the Oracle of *Jupiter* to declare him *Jupiter's* Son ‡, and endeavoured, by many Acts of Violence and Cruelty, to make it pass upon others that he was so || ; and after that, required *divine Honours* to be paid him (as a God) which he affected to be thought : And accordingly commanded that all who were admitted to make Addresses to him should adore him §.

He was a most exorbitant Drunkard, and so much given to Debauchery, and particularly to the shameful and detestable Crime of unnatural Lust, that he pardoned *Nabazzanes*, a *Persian* Nobleman (who had most treacherously conspired the Imprisonment, and afterwards Death of *Darius* his King) only for the Sake of *Bagaas*, a young Eunuch, which he presented to him as a *Catamite* for the Service of his Lust.

And afterward he sacrificed *Orsines*, a noble *Persian* of great Wealth, as well as of ancient Nobility, though he had been his faithful

† Connect. Part I. p. 489. Anno before C. 332.

‡ Ibid. p. 492.

|| Ibid. p. 493.

§ P. 505.

Friend, and done him great Services, at the Instigation of the same vile *Catamite* \*.

The great Impostor, *Mahammed*, was another notable Prohibiter of such Marriages; witness the Fourth Chapter of his *Koran*, entitled, *Women*. But then what was his Character? He was a Man, who (as the learned Dean, before cited, tells us) “ much delighted in Rapine, Plunder, and Bloodshed †. “ His two predominant Passions were Ambition and Lust. The Course he took to gain Empire, abundantly shows the former; and the Multitude of Women he had to do with, “ proves the latter. And indeed” (says the Dean) “ these two run through the whole Form of his Religion, there being scarce a Chapter in his Alcoran which doth not lay down some Law of War and Bloodshed for the promoting of the one; or else give some Liberty for the Use of Women here, or some Promise for the Enjoyment of them hereafter, to the gratifying of the other ‡.”

Yea, if the Story Dr. *Willet* mentions of him is true, no one could be more abandoned to Brutality §.

Surely such Men as these were worse than *brute Beasts*. Can it be imagined then, that they prohibited Marriages betwixt near Kindred

\* Page 512.

† Life of Mahomet, 6th Edit. p. 116.

‡ *Prideaux's Life of Mahomet* 6th Edit. Pages 116, 117.

§ *Willet's Hexempla on Leviticus*, Chap. xviii. ver. 23. Page 434.

out of *Zeal for Purity*? No! you may as well suppose it of the *Devil* himself.

It is very probable (says Bishop *Jeremy Taylor*) that those barbarous People (the *Goths*) were the great Precedents and Introducers of the Prohibition \*.

I will mention but one more, and that shall be a Man of a much better Character than the others before named, *viz.* the *eloquent* and renowned Philosopher, *Cicero*, who sometimes “ speaks against the Marriage of Cousins; so  
 “ that (says Bishop *Jeremy Taylor*) it is but too  
 “ reasonable to suppose he did it to remove  
 “ Suspicion from himself; it having been  
 “ objected against him by *Q. Fufius Calenus* in  
 “ *Dio*, that he was too kind and amorous to  
 “ his own Daughter. *Filia matris pellex tibi*  
 “ *jucundior atque obsequentior quàm parenti par*  
 “ *est*; So unequal, so uncertain a Way it is  
 “ to trust the Sayings of a Man, when so fre-  
 “ quently the Man’s Opinion is not caused by  
 “ his Reason, but by a secret Interest †.”

On the whole, I think I have clearly proved, that Marriage betwixt near Kindred is not prohibited in the xviii<sup>th</sup> and xx<sup>th</sup> Chapters of *Leviticus*; but that the Prohibitions there given were intended to prevent all Debauchery, even the Beginnings of it, and all Temptations to it, especially betwixt near

\* *Duct. Dubit.* B. 2. Ch. 2. N. 64. p. 237.

† *Duct. Dubit.* B. 2. Ch. 2. R. 3. N. 78. p. 240.



Kindred ; but have no Relation to Marriages between such.

Let us now proceed,

Fourthly, To consider the Law of Nature in this Case ; and here it may be fit to observe, that according to the State and Condition of Mankind, and the Relation they stand in towards their Creator, and one another, there are some Things in their own Nature fit, and others unfit to be done, as is very evident to all rational and considerate Persons : And as our great Creator is a Being of infinite Wisdom and Rectitude ; it cannot but be his Will, that whatsoever is fit to be done, should be done, and whatsoever is unfit to be done, should be left undone. All this, I think, is plain and clear.

To apply it then to the Case in Hand ; It must be observed, that by the *Relation* Parents and Children bear to each other, there are such *relative Duties* which they owe one another, as makes it *unfit* for them to be joined together in Marriage. This is not only granted on all Sides, but is insisted on by those that differ from me in the Case of Marriages betwixt near Kindred in general ; which makes it needless to enter into a particular Proof of it. I shall therefore only further observe here, that as Marriage is *unfit*, and therefore *unlawful* betwixt *Parents* and *Children* ; so it is likewise *equally*, or rather *more so* betwixt *Parents* and their *Grand Children*, and all others in the right ascending and descending Line : For the further  
off

off in that Line, the *more unfit* that they should be joined together in Marriage ; because to the natural Duties that subsist between such, there is to be added also that of *Inequality of Age* ; which (where it is very great) I look upon as another *moral Impediment* of Marriage : For the Inconveniencies and Evils that naturally follow from it, are so great, and so very plain and common, that every considering Person must have observed them.

Let me therefore add here, that as Marriage in the right ascending and descending Line, is thus prohibited by the Law of Nature ; so, *proportionably* all such as stand in the Place, or are the Representatives of such ; as all Fathers and Mothers-in-law, and all that are appointed Guardians, with those that are left under their Care (at least as long as they are so under their Care, and till their Trust is legally discharged) are to be looked on as *effectually* barred from marrying one another. This hath been set forth by the Learned in different Lights, and is so plain, and I think so intirely agreed on all Hands, that I shall insist no longer on it,

But shall proceed to consider the Case of Marriage betwixt collateral Kindred on the Foot of Nature ; and here, if I mistake not, it will be found to be vastly different. Most learned and judicious Authors that have written concerning it, both ancient and modern, have agreed in this, that Marriage betwixt near Kindred is forbidden by the Law of Nature in

the ascending and descending Line only \*, which exactly agrees with the Christian Law in this Case, as was well observed by Bishop Jeremy Taylor: His Words are, “ Of that which  
 “ Christ said, the Sum is this only. *For this*  
 “ *Cause shall a Man leave Father and Mother,*  
 “ *and cleave to his Wife, and they two shall be*  
 “ *one Flesh.* By which Words he did esta-  
 “ blish all that was natural and moral in this  
 “ Affair. [A Man shall leave Father and  
 “ Mother.] By these Words are forbidden  
 “ the Marriage of Parents and Children. [He  
 “ shall cleave to his Wife.] By this is for-  
 “ bidden *concubitus masculorum.* [His Wife]  
 “ By this is forbidden Adultery, or the lying  
 “ with another Man’s Wife, and extra-nuptial  
 “ Pollutions. [*Erunt duo.*] *They two,* by that  
 “ is forbidden Polygamy. [*In carnem unam*]  
 “ *shall be one Flesh.* By this is forbidden Besti-  
 “ ality or the Abuse of *caro aliēna*, the Flesh  
 “ of several *Species*; which (*said he*) are all  
 “ the unlawful and unnatural Lusts forbidden  
 “ by God in the Law of Nature †.

The true Distinction between *moral* and *positive* Laws, is this; moral Laws flow from the *Nature and Reason of Things*, and are *immutable and unchangeable*, and not only obligatory on all rational Creatures, but also a Rule of Action to Almighty God himself, by which he governs them: For tho’ he cannot be bound

\* Duâ. Dubit. Book 2. Ch. 2. R. 3. N. 17. p. 222.

† Duâ. Dubit. Book 2. Ch. 2. Rule 3. N. 56. p. 234.

by any *external Laws* ; there being no Power comparable to his,—none but what is derived from him, and depends upon him ; yet he is obliged by his *infinite Wisdom*, and the *Rectitude of his own Nature*, to do that which is holy, just and good ; and cannot will or command any Thing to be done that is unjust, evil, or in anywise unfit to be done : But *positive Laws* are of a different Nature, they depend on the Will of the Lawgiver, and may be varied and altered at Pleasure. Learned and ingenious Men, therefore, generally allow that Marriage in the ascending and descending Line only, is prohibited by the Law of Nature (the *nearest collateral Marriages* having been made *necessary* by God himself :) Yet they now as generally think, it is more fit that Marriages betwixt Brothers and Sisters should be prohibited than allowed : They seem to make such Marriages stand as a *Medium* between the *Law of Nature* and *positive Laws*. Dr. Wood (who hath published a learned Institute of the Civil Law, as well as of the Laws of *England*) concerning Marriage betwixt near Kindred, thus expresses himself, “ The Law of Nature for-  
 “ bids it in the ascending and descending Line ;  
 “ the Law of Nations between Brothers and  
 “ Sisters, and the Civil and Positive Laws ;  
 “ where there is any other Prohibition \*.”

Many have offered Reasons for prohibiting Marriage betwixt Brother and Sister. The

\* Wood's Institut. of the Civil Law, B. 3. C. 10. Par. 6.



pious and learned Bishop *Taylor* (before cited) when he was considering this Scruple of St. *Austin's* [as he calls it] viz. " There is in the  
 " Modesty of Mankind something that is na-  
 " tural and laudable, by which they abstain  
 " from Congression with them, to whom they  
 " own the Honour of Reverence and modest  
 " Bashfulness," (*said*) " This indeed is a  
 " good Account, where the Modesty of Nature  
 " does really make Restraints, and owe<sup>d</sup> Duty  
 " and Reverence ; and therefore is one of the  
 " most proper and natural Reasons against  
 " the Marriage of Parents and Children, and  
 " is by the Allowance of some Proportions  
 " extended to Brother and Sister ; but if it  
 " be sent out one Step further, you can never  
 " stop it more, but it shall go as far (as)  
 " any Man please to fancy : Therefore let  
 " it stop where God and Nature have  
 " fixed its first Bounds, and let not the  
 " Pretence of a natural Reason or Instinct,  
 " carry us whither Nature never did intend ;  
 " for it is certain she gave larger Commissions,  
 " however the Fears, or the Scruples, or the  
 " Interest of some Men have made them to  
 " speak otherwise \*.

It hath been said by others, that *the Familiarities and Freedom with which they converse together, would give Occasion to Fornications and Adulteries, if such Amours might terminate*

\* Duct. Dubit. B. 2. Ch. 2. R. 3. N. 78. p. 240.

*in a lawful Marriage* : Therefore such Marriages ought not to be permitted.

This hath been set forth by different Authors in various Forms of Words, and mentioned by many Casuists as the Reason of prohibiting collateral Marriages betwixt near Kindred ; and perhaps as to Brothers and Sisters, who now usually are, from the Time of Childhood, brought up and freely converse together, there may be something in it : And therefore, as all Temptations to Sin ought, as much as possible, to be avoided, this may be worthy of the Consideration of our Legislators on that Account. Yet the learned Dr. *Hammond*, tho' a strenuous Opposer of such Marriages, did not seem pleased, that this should be urged as the Reason of their Prohibition.

For, says he, “ 1. By that Reason *Incest* should be *forbidden* only to keep Men from *Fornication*, and so *Fornication* be the greater, and *Incest* the lesser Sin ; as that, certainly, which is therefore forbidden, that it may secure another Precept, is to be looked on as a lighter Fault than the Breach of that Precept, as the Means are inferior, because subordinate to the End.” This no doubt is true ; but the learned Doctor further saith, “ By this Reason, those severe Penalties should only have been made against *Fornication* or *Adultery* committed with those whom we most familiarly converse, but not against marrying of them. For supposing it were still lawful for *Brothers* and *Sisters* to marry, the mak-

“ ing it *capital* for them to *commit Uncleanneſs*  
 “ one with another out of Marriage, would as  
 “ much deter them from ſuch Uncleanneſs, as  
 “ if it were alſo *capital* for them to *marry*. He  
 “ that were ſure to be *hanged* for *Swearing*,  
 “ would be as certainly deterred from *Swearing*,  
 “ as if the ſame Punishment were denounced  
 “ againſt *Swearing* and *Cuſing* alſo ; which”  
 [ſays he] “ makes it probable, that the *Ground*  
 “ or *End* of thoſe *Prohibitions* was (not) the  
 “ *leſſening* of, or *reſtraining* from *Uncleanneſs* \*,  
 “ but more probably that *Peace* and *Amity*  
 “ might by this Means be *extended* more large-  
 “ ly, than the *natural* Bands of *Relation* had  
 “ *extended* it, as both *Plutarch* in his 101 *Ro-*  
 “ *man Queſtion*, and *St. Auguſtine de Civ. Dei*, l.  
 “ 15. Ch. 16. have affirmed †.” The learned  
 Doctor thought the Laws in the 18th and 20th  
 of *Leviticus* to be Prohibitions of Marriages  
 betwixt near Kindred, which was a Thing ge-  
 nerally taken for granted, as I conceive, with-  
 out due Examination. For (if I miſtake not)  
 I have demonſtrated they ought not to be *un-*  
*derſtood in that Senſe*, but were given to pre-  
 vent Fornication and Adultery between all Per-  
 ſons whatſoever, but eſpecially betwixt near  
 Kindred, by prohibiting all Temptations to it ;  
 and the *ſevere Penalties* are only levelled againſt  
 the groſſer Acts, *viz.* of *Fornication* and *Adul-*  
*tery* committed by ſuch, as the learned Doc-

\* Thus you ſee in the Judgment of Dr. *Hammond*, the pre-  
 venting of Uncleanneſs is no good Reason for prohibiting Mar-  
 riage betwixt near Kindred.

† Dr. *Hammond's* Letter of Reſolution of Six Queries. Query  
 2. §. 22. in the firſt Volume of his Works.

tor faith they should be, on Supposition the preventing of Uncleanness was the Reason of them.

The preventing of Uncleanness therefore (as Families are now generally circumstantiated, Male and Female Children being usually brought up together) may notwithstanding what the learned Doctor said to the contrary, be a *good Reason* for the discountenancing of Marriage betwixt Brother and Sister ; but then it cannot reasonably be extended *any further* ; for if you extend it *any further* than to *Brother and Sister*, you may as well extend it to *Neighbours, School-fellows, and all other Persons* that use to converse freely together. And as to the other Reason which the Doctor hath mentioned for those Prohibitions, instead of the abovementioned, *viz.* the extending Peace and Amity more largely, or as others have expressed it, that new Acquaintances, and thereby Trade and Commerce might be more largely extended, and not restrained to particular Families : It is not (as the learned and judicious *Grotius* observes) “ of so much Weight and Confidence, as to make one believe that Marriages contrary to such an End are to be reputed void or unlawful. For that which is less useful is not merely upon that Account unlawful. Add to this, that it may possibly so happen that some greater Advantage, however great this may be, may interfere with and oppose it \*.

\* *Grotius of War and Peace, Eng. Transl. B. 2. Ch. 5. p. 195.*



And it may easily be shown, that there *often has happened*, and probably will often happen, *greater Advantages* to oppose it.

Besides, let me observe here, that this was never made by our all-wise Creator any End of Marriage : Universal Love and Charity was ordained for the End abovementioned.

All the Ends for which Marriage *was ordained*, are excellently well set forth in the *matrimonial Office*. The third whereof, *viz.* “ the mutual Society, Help and Comfort that “ the one ought to have of the other, both in “ Prosperity and Adversity,” is many Times not very consistent with the abovementioned Reason : For Experience shews, that those married People who were well acquainted with one another’s Behaviour before Marriage, and were used to the same Customs and Manner of living as Neighbours, familiar Acquaintance, and near Relations usually are, are more likely to prove Helps and Comforts to each other, than those that were Strangers, and lived at a great Distance are. And therefore wise and good Men usually advise their Sons not to go among Strangers to take Wives.

So *Abraham*, (who himself married his half Sister) made his Steward swear to take a Wife of his Kindred unto his Son ; and *Isaac* gave a like Charge to *Jacob* his Son ; which I think was well approved of by all the Prophets : And after their Times we find *Tobit*, who had himself

himself married his Kinswoman \*, thus instructing his Son. *Beware of all Whoredom, my Son, and chiefly take a Wife of the Seed of thy Fathers, and take not a strange Woman to Wife, which is not of thy Father's Tribe : for we are the Children of the Prophets, Noe, Abraham, Isaac and Jacob : Remember, my Son, that our Fathers from the Beginning, even that they all married Wives of their own Kindred, and were blessed in their Children. Now therefore, my Son, love thy Brethren, and despise not the Sons and Daughters of thy People, in not taking a Wife of them †.*

And further I observe, that if the forementioned Reason of extending Friendships, &c. proved any thing, it would prove too much ; for it would prove we ought to marry none but Strangers, which is much more than is intended to be proved by it. That Argument, therefore, which proves too much, is generally allowed to be good for nothing.

And this (if I mistake not) is a Fault all the Arguments are subject to, that can be offered against any Marriages betwixt Kindred that are more remote than Brothers and Sisters. Some of the Canonists, (as Bishop *Jeremy Taylor* observes) were for extending the Prohibitions of Marriages to a great Length ; some to the fourth, others to the seventh Degree. “ They  
“ that were for four gave this grave Reason  
“ for it. There are four Humours in the

\* *Tobit* i. 9. iii. 15.

† *Tobit* iv. 12, 13.

“ Body of a Man, to which, because the  
 “ four Degrees of Consanguinity do answer,  
 “ it is proportionable to Nature to forbid the  
 “ Marriages of Cousins to the fourth Degree.  
 “ Nay more, there are four Elements, *Ergo*.  
 “ To which it may be added, that there are  
 “ upon a Man’s Hand four Fingers and a  
 “ Thumb. The Thumb is the Stirps or  
 “ common Parent ; and to the End of the  
 “ four Fingers, that is the four Generations of  
 “ Kindred we ought not to marry, because  
 “ the *Life of a Man* is but a Span long.  
 “ There are also four Quarters of the World ;  
 “ and indeed so there are of every Thing in  
 “ it, if we please, and therefore abstain at  
 “ least till the fourth Degree be past. Others,  
 “ *who are graver and wiser* (particularly *Bo-*  
 “ *naventure*) observe cunningly, that besides  
 “ the four Humours of the Body, there are  
 “ three Faculties of the Soul, which being  
 “ joined together make seven, and they point  
 “ out to us, that Men are to abstain till the  
 “ seventh Generation. These Reasons, such  
 “ as they are (says he) they therefore were  
 “ content withal, because they had no better ;  
 “ yet upon the Strength of these they were  
 “ bold even against the Sense of all Mankind  
 “ to forbid these Degrees to marry \*.”

*Such Reasons as these need no Confutation.*

It hath been (I think) the general Opinion  
 of the best and most learned Authors that

\* Duft. Dubitan. B. 2. C. 2. R. 3. N. 66. p. 237, 238.

have treated of it, That no good natural Reasons can be assigned for prohibiting of any Marriages, but in the ascending and descending Line only, except that of Brother and Sister, (where Inequality of Age, Guardianship, or the like, don't interyene to hinder it.) Concerning this Point the Learned *Grotius* observed, that “ the Question about the Marriages of those who by Blood or Affinity are related, is a nice and difficult Point, and which has frequently been managed *pro* and *con* with no little Heat and Commotion. For whoever attempts to assign certain and natural Reasons why such Marriages are prohibited by the Laws and Customs of Nations, will by Experience find it a Task not only difficult but impracticable \*”. Bishop *Jeremy Taylor* fully agrees in the same Sentiment. His Words are, “ Whosoever shall go about to assign the proper Reasons why certain Degrees are forbidden to marry by the Law of God.” [*The pious Bishop meant by the Laws in the 18th and 20th of Leviticus, which he took to be Prohibitions of such Marriages*] “ will by Experience find it be too hard for his Head †.

The Learned Author of a Work, entitled *Scripture vindicated*, said to be Dr. *Waterland*, on this Point, thus expresses it, “ Certain it is, that in those early Ages of the World,”

\* *Grotius* of War and Peace, *English* Translat. B. 2. C. 5. Par. 12. Sect. 1. p. 194, 195.

† *Duct. Dubitan.* B. 2. C. 2. R. 3. N. 74. p. 239.

[*viz.*



[viz. the Time of *Abraham*,] “ the Rules  
 “ about marrying with their Kindred were  
 “ not so strict, neither was there any Reason  
 “ that they should \*.” And the pious Bishop  
 before cited saith, “ no Nation of old did  
 “ observe all these Laws” [of *Moses* ;] “ and  
 “ there was never any sufficient Argument to  
 “ inforce upon us their Obligation, because it  
 “ must needs remain to us as it was before  
 “ the Law ; if they were not obliged then,  
 “ neither are we †.” And in the next Section  
 he further saith, “ That all Mankind was not  
 “ bound by all these Laws of Consanguinity  
 “ and Affinity, appears in all the foregoing  
 “ Instances : And the Marriages of the Pa-  
 “ triarchs must conclude them to be as im-  
 “ pious as the *Canaanites* in theirs, or else that  
 “ these Laws did not oblige all Mankind ;  
 “ and if not from the Beginning, then not  
 “ now : If these Laws were not natural, they  
 “ are not Christian ‡.”

Thus have I considered all the Arguments  
 (that I know of) that have been urged from  
 the Nature and Reason of things, against Mar-  
 riages betwixt collateral Kindred, that seem  
 to carry any Force with them : And if I mis-  
 take not, have shown that when they are ex-  
 tended to any Kindred more remote than Bro-  
 thers and Sisters, they are all inconclusive, and  
 of no Force.

\* *Scrip. Vind.* Part I. p. 461.

† *Duct. Dubit.* B. 2. C. 2. R. 3. N. 36. p. 230.

‡ *Ibid.* N. 37. p. 230.

Let us next try, whether nothing can be said for the *Expediency of some of those Marriages*, and whether it can't be shewn from the *Nature and Reason of Things*, that it may be fit and reasonable, *under some Circumstances*, that Matrimony should be contracted betwixt such.

I observe then, that next to *Procreation of Children*, and the Concomitants of it, the chief End of Marriage is, *mutual Society, Help, Assistance, Comfort and Support, both in Prosperity and Adversity*: And therefore those Matches must be the *fittest* that are contracted between such as are most likely to answer these Ends. Now the Nature and Reason of the Thing itself, as well as constant Experience, both in ancient and modern Times, shew us, that the forementioned Ends are much more likely to be answered, when the Persons contracting Matrimony are such as were well acquainted with each other's Life and Conversation, domestic Customs, and Manner of Living before Marriage, than betwixt such as were Strangers to each other as to these Things.

Now let us put a Case. Suppose a younger Brother to be descended from Parents that have a large Family of Children, and that his elder Brother hath a Daughter *for Age agreeable to his*, a virtuous Woman, educated, and in all Respects accomplished according to his Heart's Desire; and for whom, therefore, he hath deservedly a great Esteem and Veneration, and a strong Inclination to her as a Partner

ner for Life. Suppose too, he is so happy as to find that her Sentiments on this Head are the same with his own, and that their *Parents* also on both Sides approve of it; and consequently that the Marriage (if contracted) is likely on all Accounts to be agreeable and happy, What Marriage, in such Circumstances, can be supposed more fit and proper?

Again, Suppose a Man had married a virtuous Woman, every Way fit for him, with whom he lived happily, till it pleased God to take her off by Death, leaving him a Widower with young Children, and his Circumstances such as made it fit for him to marry again, and his deceased Wife had a Maiden Sister much like herself, and therefore on all Accounts fit for him, who on account of his kind and obliging Behaviour to her Sister, had conceived so good an Opinion of him, and such Fondness for his Children, as engaged her Consent to supply her Sister's Place; Can any reasonable Person say it would not be fit for him to marry her \*? But, if, instead of her, he married one who was not of his former

\* A Learned Treatise, published in the Year 1752, in two Volumes, entitled, THE SPIRIT OF LAWS, translated from the French of *M. de Secondat, Baron de Montesquieu*, speaking of Marriages between near Relations, mentions it as a Custom in the *Indies*, That “ *if a Husband has lost his Wife, he does not fail to marry her Sister.*” And this (says he) is *extremely natural*, for his new Consort becomes the Mother of her Sister's Children, and not a cruel Step-mother- Vol. II. B. 26. Ch. 14. p. 209.

Wife's Kindred, and had Children by her ; is it not reasonable to think, that Nature would prompt her to love her own Children better than his former Wife's Children, and that she would shew it plain enough in her Behaviour towards them ? In that Case would it not be his Duty to interpose in Behalf of his former Wife's Children ? And is it not highly probable his doing so, would make her uneasy, and suspect he loved his former Wife's Children better than her's, and that her Relations and intimate Acquaintance would further and promote such Suspicions ? which certainly would create great Uneasiness in the Family, the Consequences of which might be deplorable.

But if he married his former Wife's Sister, (being a Person of the Character before supposed) these Evils might be in great Measure prevented ; for tho' he had Children by her, and Nature prompted her to love them better than her Sister's, yet it is probable she would have more regard for her Sister's Children than for Strangers. But (however that might be,) if it was observed she made considerable Difference between them and her own Children, on informing her Parents or nearest Relations of it (they being as nearly related to his first Wife's Children as to her's) would (no doubt) readily admonish her of her Duty in that Respect, by Means whereof the Evils beforementioned might be better prevented ; whereas in the other Case, the near Relations would be



the great Furtherers and Promoters of such Evils.

More Examples might be added to illustrate this Point, but I humbly conceive these are sufficient to shew, that there are some Marriages with near collateral Kindred, which, for such Reasons as these, will appear to be fit and right, and, on that account, must be agreeable to the Will of God. 'Tis impossible, therefore, that any Thing of Weight can be said against them.

*Object.* What! can there be nothing of Weight said against these Marriages? What think you of the Laws of our Land against them? Will you say they are to be considered as of no Weight? Have not we, in our Books of Reports, Cases wherein Marriages within the Degrees abovementioned, have been adjudged unlawful; and Instances of Marriages dissolved by Ecclesiastical Sentence on that Account?

*Answer.* If it was true, that the Laws of our Land did indeed prohibit these Marriages, it would, in my Judgment, be the strongest Objection that remains against them.

But I conceive this Objection is wholly built on a Mistake of the Law in this Case; which with humble Submission to our Reverend and Learned Judges, and Students of the Law, I shall endeavour to shew. Which brings me to the last general Head, which was,

Fifthly

Fifthly and Lastly, To examine, whether there is any Law in Force here against the Marriages I am pleading for.

And to do this, it will be fit to begin where the Statute Law did ; which was in the 25th Year of the Reign of King *Henry VIII.* for before that Time, I know of no Law pretended to be in Force in this Kingdom, relating to this Point, but the *Canon Law*, and that was varied and altered at different Times by the Popish Clergy, as best suited their Interest or Inclinations ; so that on disobliging them, they could on some Pretence or other by them invented, dissolve almost any Marriage ; so that no Man was sure (without a Dispensation) to keep his Wife \*.

But on giving them a Sum of Money to their Content, they would procure a Dispensation from the Pope, to marry any Kinswoman they thought fit ; and then (how near soever they were related) all Objections were suppressed.

There have been five Acts of Parliament made touching this Point.

The *first* was that of 25 *Henry VIII.* Chap. 22. concerning *the Succession of the Crown.*

The *second* was made in the 28th Year of the same King, Chap. 7. for *the Establishment* also of the *Succession of the Crown.*

The *third* was made in the same Year and Sessions of Parliament, Chap. 16. relating to

\* See the Preamble to the Statute of the 32 King *Henry VIII.* Ch. 38. herein after cited, p. 95, &c.

*pretended Licences and Dispensations from the See of Rome.*

The *fourth* was that of the 28th Year of the same King, Ch. 38. which wholly concerns Marriage, viz. *Precontracts of Marriages, and touching Degrees of Consanguinity.*

The *5th* and last of these Statutes was made in the *first Year* of the Reign of Queen Mary, Sess. 2. Chap. 1. *declaring the Queen to have been born in a most just and lawful Matrimony, and also repealing all Acts of Parliament, and Sentences of Divorce made or had to the contrary.* All these Acts (except this last mentioned of the first of Queen Mary) have been repealed, and some of them again revived by Acts since made. And as to one of them in particular (viz. the *second* of the abovementioned Acts) it is a disputed Case, whether it is now in Force as to the Point at present under Consideration, or else repealed and void. And as the rightly determining this, is a Matter of great Weight and Consequence, in order to discover what is Law with relation to Marriages betwixt near Kindred; I shall therefore endeavour to investigate this with the utmost Care and Impartiality, and treat of each of these Acts in Order, and give a short Account of the Occasion of making of them, for the better Understanding thereof.

The Occasion of making of the first of them was as followeth.

King Henry VIII. when young, married the Princess Catherine, his Brother Arthur's Widow,

dow, with whom he had lived above twenty Years, and had by her two Sons (that died young) and a Daughter called *Mary* (afterward Queen) who being about twelve Years of Age, a Treaty was proposed by King *Henry* her Father, and the *French* King, for a Marriage between her and the Duke of *Orleans*, the *French* King's second Son.

On which a Question was started (it is said) at *Paris*, whether or no she was legitimate, being begotten by the King on his Brother's Widow; by Means whereof a Scruple was then (it is said, not first infused, but) revived in the King's Mind of the Unlawfulness of his Marriage, which was also strengthened by one or more learned Men that were of his Council: On Account whereof, our two Universities, and several foreign ones were applied to for their Opinions in the Case, and Answers obtained from some of them under their Seals, *That the King's Marriage with his Brother's Widow was unlawful.*

Upon which Determination, Bishop *Jeremy Taylor*, before cited, made the following Remark, That "learned Men upon that Oc-  
 " casion gave too great a Testimony, with how  
 " great Weaknesses Men that have a Bias do  
 " determine Questions, and with how great  
 " Force a King that is rich and powerful can  
 " make his own Determinations. For tho'  
 " Christendom [said he] was then much di-  
 " vided; yet before there was almost a gene-  
 " ral Consent upon this Proposition, that the



“ *Levitical Degrees* do not by any Law of  
 “ God bind Christians to their Observation \*.

On the abovementioned Decision of the Universities, the King and Queen were summoned before Archbishop *Cranmer*, &c. and a Sentence of Divorce passed, by which his Marriage with her was declared null and void, and the King married the Lady *Anne Boleyn*; and upon that Account the *first Statute* (25 *Henry VIII.* Ch. 22.) was made, intituled, *An Act declaring the Succession of the King's most Royal Majesty in the imperial Crown of this Realm*, to confirm the said Divorce, and to establish the King's said Marriage, and settle the Succession of the Crown on his Heirs by the said *Anne Boleyn*, and to make it high Treason to speak against the said Marriage, and to confirm the Succession so settled by an Oath to be taken by all the King's Subjects in such Manner as he should appoint: And therein was particularly set forth the Degrees of Consanguinity and Affinity within which Marriage was *then asserted* to be forbidden by God's Law.

But this Act was clearly and fully repealed by two subsequent Acts †, as herein after will plainly appear; and yet this Statute is fairly printed in the late pompous Collection of the Statutes at large, as collected and published by Mr. Serjeant *Hawkins* and others, in Six Vo-

\* *Duct. Dubit.* B. 2. Ch. 2. R. 3. N. 17. p. 222.

† The 28 *H. VIII.* c. 7. and 1 *M. Sess.* 2. c. 1.

lumes, in the Year 1735, without the least Notice of its being repealed ; and both of the Acts that repealed it are left out of that Collection ; by Means whereof, all Students of the Statute Law, who make Use of that Collection only, must necessarily be misled in this Point.

About the Beginning of the 28th Year of the King's Reign, *Anno* 1536, an Accusation was raised against *Queen Anne Boleyn*, for which she was tried and condemned, and on the 29th of *May* beheaded in the *Tower*.

The *next Day*, the King was married to the Lady *Jane Seymour* ; and the Month following, (*viz.* in *June*) the Parliament met, and made the second Statute (28 *Henry VIII.* Ch. 7.) intituled, *An Act for the Establishment of the Succession of the Imperial Crown of this Realm*. By this Act the last mentioned (of 25 *Henry VIII.* Ch. 22.) and one other Act (of 26 *Henry VIII.* Ch. 2.) intituled, *An Act ratifying the Oath that every of the King's Subjects hath taken, and shall hereafter be bound to take, for due Observation of the Act made for the Surety of the Succession of the King's Highness in the Crown of the Realm*, being therein particularly recited, were both repealed in the following Words.—“ Enacted by the Authority of this  
“ present Parliament, that the said two Acts,  
“ and every of them, and all Clauses, Ar-  
“ ticles, and Provisions therein contained,

“ from the first Day of this present Parli-  
 “ ment, shall be repealed, annulled, and made  
 “ frustrate, and of none Effect.”

And therein both the King's two former Marriages were declared void, and his Daughter *Mary* by the first, and *Elizabeth* by the second (afterward *Queens*) were declared *illegitimate*; and it was thereby made high Treason for *either* of them to claim any Right to the Crown, and for any other Person to affirm they had any such Right; and the King's Marriage with the Lady *Jane Seymour* was confirmed, and the Succession settled on his Heirs by *her*; and in Default of Issue by her, on his Heirs in general, whether Male or Female, by any *other Woman* he should marry; and in Default of any *Heirs of his Body*, on such Person as the King by his Letters Patent, or his last *Will*, should appoint: And it was also made thereby high Treason for either of the King's Children, or any other Person to claim any *Right*, or to assert that any one had any *Right* to the *Crown*, otherwise than as so settled and appointed by him.

And all the King's *Subjects*, when at *Age*, were thereby obliged to *swear* to maintain the Succession, as it was *settled*, or should be *settled* and appointed by the King, according to this Act.

And therein was again particularly set forth and prohibited, the same Degrees of Kindred that were before prohibited by the first above-mentioned Act.

But

But this *Act* also was afterward wholly repealed and made void, as far as it related to the Point now under Consideration, and was generally allowed to be so. Mr. *Rastal*, the first considerable Collector and Publisher of the Statutes at large, marks it as such. Mr. *Polton*, the next Collector and Publisher of them, at the End of the Statute, tells his Reader it was altered  $\phi$ . 35 *Henry VIII.* Ch. 1. and repealed  $\phi$ . 1. *M. 1.* Mr. *Keble*, the next Publisher of the Statutes, left it out of his Collection, and only gave his Reader this short Memorandum of it, viz. “ Chap. 7. *An Act concerning the Succession of the Crown.*” (and then adds) Alt. 35 *Henry VIII.* c. 1. repealed 1 *M. 1.* And I think all the Statute Books published from that Time, till the last pompous Collection of Mr. Serjeant *Hawkins*, &c. abovementioned, followed Mr. *Keble* in leaving it out, with the same Memorandum of Alt.—Rep. &c. And that Collection also has left it out, and given the same abbreviated Title; and in the *Margin*, overagainst it, said, Altered 35 *Henry VIII.* c. 1. rep. 1 *M. Sess.* 2. c. 1. and so far it agrees with the former Publishers; but then adds, *Revived by 1 El. c. 1.*

This is the first Time, as far as I can find, That any one of the *Publishers* of the *Statutes* affirmed this Statute to be *revived*. But since it is here so *affirmed*, I think in such a Collection of the Statutes, which pretends to so much *Accuracy*, the Purchasers thereof had Reason



Reason to expect *all* the Statutes that were in Force, as *this* is there pretended to be, that they might have had an Opportunity to have examined what it was. But it may be plainly proved, that *all* the Collectors and Publishers of the Statutes since Mr. *Rastal*, have made a Mistake with Relation to it: They all indeed affirm, it was altered by 35 *Henry VIII.* c. 1. and that is right; for by that Statute, both of the King's *Daughters* were intirely illegitimated, and cut off from the Succession to the Crown. But by 35 *Henry VIII.* c. 1. in case of *Failure of other Heirs of the King's Body*, the Crown was intailed on *them*. But what the Publishers of the Statutes *all* next affirm, viz. that the Statute was repealed by the 1 *M.* c. 1. is a *Mistake*; for tho' that Statute did indeed clearly and fully *repeal* again the first abovementioned Statute of 25 *Henry VIII.* c. 22. (which as was observed was *fairly printed* in the new Statute Books, without *any the least Notice* of its being *repealed*) yet it did not repeal the 28 *Henry VIII.* c. 7. any further than as it related to the King's *first Marriage*, and Queen *Mary's Legitimacy* and Right of Inheritance, as in and by the said Statute may be clearly seen. But tho' 1 *M.* 1. did not *repeal* it, the 1 and 2 of *P. and M.* Ch. 8. Sect. 17. *plainly did*, as far as it related to the *prohibited Degrees* of Marriage, in the following Words. " And also all that Part of the " Act made in the said eight and twentieth " Year of the said King, intituled, An Act for

“ the Establishment of the Succession of the  
 “ Imperial Crown of the Realm, that concern-  
 “ eth a Prohibition to marry within the De-  
 “ grees expressed in the said Act—shall from  
 “ henceforth be repealed, made frustrate,  
 “ void, and of none Effect.

And this repealed Part of the said Act of the  
 28 *Henry VIII.* c. 7. was so far from being  
 revived by 1 *Eliz.* Ch. 1. as, in the Margin  
 of the forementioned Book of Statutes at large,  
 is asserted : That on the contrary, the said Re-  
 peal is thereby strengthened and confirmed, as  
 will, (if I mistake not) be fully shown, when I  
 come to consider what Sir *John Vaughan* al-  
 leged to the contrary, on *Hill and Good's*  
 Case.

However, (as this Point hath been made a  
 Matter of Controversy ; and because that Part  
 of this Act which relate to the Case under  
 Consideration, was not repealed, till after the  
 other Acts herein after mentioned were made ;  
 and the whole Act, as was before observed,  
 has been left out of all our Statute Books that  
 have been published, since the Time of King  
*Charles :*) That my Readers may have a full  
 View of it, as far as it relates to the Case in  
 Hand, I will here subjoin \* all that Part of  
 it

\* “ And furthermore, since many Inconveniencies have  
 “ fallen, as well within this Realm, as in others, by Reason  
 “ of the marrying within the Degrees of Marriage, prohibited  
 “ by God's Laws ; that is to say, the Son to marry the Mo-  
 “ ther, or the Stepmother, carnally known by his Father ; the  
 “ Brother the Sister ; the Father his Son's Daughter, or his  
 “ Daughter's

it that concerned Marriages betwixt near Kindred in general.

“ Daughter’s Daughter ; or the Son to marry the Daughter of  
 “ his Father, procreat and born by his Step-mother ; or the  
 “ Son to marry his Aunt, being his Father’s or Mother’s Sister ;  
 “ or to marry his Uncle’s Wife carnally known by his Uncle ;  
 “ or the Father to marry his Son’s Wife carnally known by  
 “ his Son ; or the Brother to marry his Brother’s Wife carnally known by his Brother ; or any Man married and carnally knowing his Wife, to marry his Wife’s Daughter, or his Wife’s Son’s Daughter, or his Wife’s Daughter’s Daughter ; or his Wife’s Sister.

“ And further, to dilate or declare the Meaning of these Prohibitions, it is to be understood, that if it chance any Man to know carnally any Woman, that then all and singular Persons, being in any Degree of Consanguinity or Affinity, as is above written, to any of the Parties so carnally offending, shall be deemed and adjudged to be within the Cases and Limits of the said Prohibitions of Marriage. All which Marriages, albeit they be plainly prohibited and detested by the Laws of God, yet nevertheless, at some Times, they have proceeded under Colours of Dispensations by Man’s Power, which is but usurped, and of Right ought not to be granted, admitted, nor allowed. For no Man of what Estate, Degree, or Condition soever he be, hath Power to dispense with God’s Laws, as all the Clergy of this Realm in the said Convocations, and the most Part of all the Universities of Christendome, and we also do affirm and think.

“ Be it therefore enacted by Authority aforesaid, according as it is declared and contained in the said Act, made in the last Parliament for the Establishment of your Succession, that no Person or Persons, Subjects or Resiants of this Realm, or in any your Dominions, of what Estate, Degree or Dignity soever they be, shall from henceforth marry within the Degrees afore rehearsed, what Pretence soever shall be made to the contrary thereof.

And then it followed,—in case any Persons had been married within any of the Degrees above expressed, and by any Archbishop, &c. and afterwards separated,—such Separation should be good.

And in Case they had not been separated, they should be separated, &c. without — any — Appeals — to the Court of *Rome*.—

But all this was repealed by 1 and 2 P. and M. Chap. 8. §. 17. as hath been already observed.

The

The third Act was made in the same Year, and Sessions of Parliament, Chap. 16. intituled,

*An Act for the Release of such as have obtained pretended Licences and Dispensations from the See of Rome.* And contain in Paragraph the second the following Clause, which relates to the Point.

“ —Enacted,—that all Marriages had and  
 “ solemnized within this Realm, or in any  
 “ other the King’s Dominions, before the 3d  
 “ Day of *November*, in the Six and Twentieth  
 “ Year of the King’s most gracious Reign,  
 “ whereof there is no Divorce or Separation  
 “ had by the Ecclesiastical Laws of this Realm,  
 “ and which Marriages be not prohibited by  
 “ God’s Laws limited and declared in the Act  
 “ made in this present Parliament for the  
 “ Establishment of the King’s Succession, or  
 “ otherwise by Holy Scripture, shall be by  
 “ Authority of this present Parliament good,  
 “ lawful, and effectual, and shall be from the  
 “ Beginning of such Marriages reputed, es-  
 “ teemed, taken, adjudged, received, ap-  
 “ proved, and allowed by the Authority of  
 “ this present Parliament, to all and singular  
 “ Purposes, Effects and Intents, as good, as  
 “ sufficient, and as available, as though no  
 “ Impediment of Matrimony had ever been  
 “ between them that have contracted and so-  
 “ lemnized such Marriages; and that all Chil-  
 “ dren



“dren procreated, and to be procreated, in  
 “and under such Marriages, shall be lawful  
 “to all Intents and Purposes.”

Tho’ I don’t think this to be now material in the Case, yet it is fit it should be laid before the Reader, because it has been made use of as a Medium, to endeavour thereby to prove, that the *second* of the abovementioned Statutes, *viz.* 28 *Henry VIII.* c. 7. was revived by the 1 *Eliz.* Ch. 1. which shall be herein after particularly considered.

The *fourth* Act that concerns the Point, is the 32 *Henry VIII.* Ch. 38. intituled,

“*An Act concerning Precontracts of Marriages, and touching Degrees of Consanguinity.*”

This Act related to two Things, as the Title thereof sets forth. One of them, the making void Marriages by Reason of Precontracts, and the other concerning the prohibited Degrees.

That Part which related to Precontracts, was repealed by 2 and 3 *Edw.* VI. Ch. 23. but all the other Parts of the Statute which relate to *Marriages within the prohibited Degrees* was thereby confirmed. Then this Act, and the last mentioned of 28 *Henry VIII.* Ch. 16. were repealed (among many others made against Popery) by 1 and 2 *P. and M.* Ch. 8. but were both particularly revived by 1 *Eliz.* Ch. 1. This is the most considerable Statute now in Force relating to this Point ; and, as far as it relates to Marriages betwixt near Kindred,

dred, is acknowledged on all Hands to be in full force. I will therefore give my Readers the Substance of it, with some Notes thereon for the better Understanding thereof.

*The A C T.**NOTES.*

Whereas heretofore the usurped Power of the Bishop of *Rome* hath always intangled and troubled the mere Jurisdiction, and Regal Power of this Realm of *England*, and also unquieted much the Subjects of the same, by his usurped Power in them, as by making that unlawful, which, by God's Word, is lawful, both in Marriages and other Things, as hereafter shall appear more at length, and till now of late in our Sovereign Lord's Time, which is otherwise by Learning taught than his Predecessors in Times past long time have been, hath so continued the same, whereof yet some Sparks be left, which hereafter might kindle a greater Fire, and so remaining, his Power not to seem utterly extinct.

*N. B.* It is here asserted to be Usurpation to make that unlawful in Marriage, which by God's Word is lawful.

II. Therefore it is thought most convenient to the King's Highness, his Lords Spiritual and Temporal, with the Commons

mons of this Realm assembled in this present Parliament, that *two Things*, specially, for this Time be with Diligence provided for, whereby many Inconveniencies have ensued, and many mo else might ensue and follow.

(2.) *As where heretofore divers and many Persons, after long Continuance together in Matrimony, without any Allegation of either of the Parties, or any other at their Marriage, why the same Matrimony should not be good, just and lawful, and after the same Matrimony solemnized, and consummate by carnal Knowledge, and also some Times Fruit of Children ensued of the same Marriage, have nevertheless, by an unjust Law of the Bishop of Rome, which is, That upon Pretence of a former Contract made, and not consummate by carnal Copulation (for Proof whereof two Witnesses by that Law were only required) being divorced and separate, contrary to God's Law, and so the true Matrimony, both solemnized in the*

*Face*

[*Two Things*]  
One of them wholly related to Pre-contracts, and all that was repealed by the 2d and 3d Edw. VI. Chap. 23. and is therefore here printed in a different Character, to distinguish it from the other Part which was by the same Statute of K. Edw. VI. confirmed.

*Face of the Church, and consummate with bodily Knowledge, and confirmed also with the Fruit of Children had between them, clearly frustrate and dissolved.*

3. *Further also*, by Reason of other Prohibitions than God's Law admitteth, for their Lucre by that Court invented, the Dispensations whereof they always reserved to themselves, as in Kindred, or Affinity between Cousin-germans, and so to *fourth* and *fourth* \* Degrees, carnal Knowledge of any of the same Kin or Affinity before in such outward Degrees, which else were lawful, and be not prohibited by God's Law.

(4.) And all because they would get Money by it, and keep a Reputation of their usurped Jurisdiction, whereby not only much Discord between lawful married Persons hath (contrary to God's Ordinance) arisen much Debate and

'Tis to be doubted that Lucre hath been too much the Motive in other Courts besides that of *Rome*.

Many and great are the Mischiefs and Inconveniences that generally attend, and cannot

H . . . . . Suit

\* This seems to be a Mistake. Sir *Peyton Ventris*, one of the Judges of the Court of Common Pleas, cites it in the Second Part of his Reports, p. 14.—and so to *fourth* and *fifth* Degrees, which is more likely to be the true Reading here.



*The A C T.*

Suit at Law, with wrongful Vexation, and great Damage of the innocent Party hath been procured, and many just Marriages brought in Doubt and Danger of undoing, and also many Times undone, and lawful Heirs disherited, whereof there had never else, but for

*NOTES.*

not but attend, the hindering and dissolving of lawful Marriages: The Consequences of such Dissolutions have been most deplorable, many honest Families which otherwise might have been useful Members of Society, have been utterly ruined by it.

Not one half of the ill Consequences can follow from permitting ten doubtful Marriages to continue undissolved, as may by the dissolving one lawful Marriage; therefore great caution ought to be observed in this Case, and no Marriage dissolved that is not plainly and clearly contrary to God's Law.

their vain-glorious Usurpation, been moved any such Question, since Freedom in them was given by God's Law, which ought to be most sure and certain.

(5.) But that notwithstanding Marriages have been brought

All Marriages wherein Freedom is given by God's Law ought to be most sure and certain. It was the express Command of our blessed Saviour himself, *what God hath joined together,*

*The A C T.**NOTES.*

brought into such an Uncertainty thereby, that no Marriage could be surely knit and bounden; but it should lie in either of the Parties Power and Arbitre, casting away the Fear of God, by Means and Compasses to prove a *Precontract*, a Kindred and Alliance, or a carnal Knowledge, to defeat the same; and so under the Pretence of these Allegations afore rehearsed, to live all the Days of their Life in detestable Adultery, to the utter Destruction of their own Souls, and the Provocation of the terrible Wrath of God upon the Places where such Abominations were used and suffered.

(6.) Be it therefore enacted by the King, our sovereign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by Authority of the same, That from the first Day of the Month of *July* next coming, in the Year of our Lord God 1540; all and every such Marriages as within this Church of *England* shall

*gether, let no Man put asunder.*  
*Matthew xix. 6.*  
*Mark x. 9.*

*Observe,* 'Tis here asserted, that the breaking of lawful Marriages are such Abominations as provoke the terrible Wrath of God upon the Places where they are suffered.

*The A C T.*

be contracted between lawful Persons (as by this Act we declare all Persons to be lawful that be not prohibited by God's Law to marry.)

(7.) Such Marriages being contract and solemnized in the Face of the Church, and consummate with bodily Knowledge, or Fruit of Children, or Child being had therein between the Parties so married, shall be by Authority of this present Parliament aforesaid, deemed, judged, and taken to be lawful, good, just, and indissoluble, *notwithstanding any Precontract or Precontracts of Matrimony not consummate with bodily Knowledge, which either of the Parties so married, or both shall have made, with any other Person or Persons before the Time of contracting that Marriage, which is solemnized and consummate, or whereof such Fruits is ensued, or may ensue, as aforesaid, notwithstanding any Dispensation, Prescription, Law, or other Thing,* granted

*NOTES.*

Here it is as plain as any Thing possibly can be, that all Marriages are by this Statute declared to be lawful, good, just, and indissoluble, that are not prohibited by God's Law; and that the making and declaring this to be so, was the main Design and Intent of this Act.

May it not then be reasonably affirmed, that the Spiritual Courts ought not to be permitted to dissolve any Marriage, but such as is plainly prohibited by the Law of God, and not such as are only judged to be so by far fetched Inferences, and doubtful Reasonings, about which pious and learned Men are much disagreed.

As it hath been shewn to be the Design and Intent of our Legislators in this Statute to put

*The ACT.*

granted or confirmed by Act,  
or otherwise.

*NOTES.*

put the Case of Marriages upon the Foot of God's Law, and to enact and declare, that all Marriages not prohibited by that, should be good and indissoluble.

So here in this Clause they took care to repeal and make void every Thing that was contrary to that End and Design; any Prescription, that is, any ancient Usage or Custom, any Law or other Thing, granted or confirmed by Act [of Parliament] or otherwise. Now, therefore, no Law, no Act of Parliament, nor any ancient Custom can legally be pleaded against any Marriage not prohibited by God's Law.



*The A C T.**NOTES.*

(8.) And that no Reservation or Prohibition, God's Law except, shall trouble or impeach any Marriage without the *Levitical Degrees*.

*The Levitical Degrees.*] This is the darkest and most obscure Part of the whole Act, and, therefore ( with humble Submission to the Reverend the Judges, and all

others learned in the Law ) I humbly conceive, not fit to be made the Standard whereby to explain the whole of it, as it was by that great and eminent Lawyer Sir *Edward Coke*, in his Comment thereon, which see, in his second Institute, p. 683, &c. He thought those Degrees were truly set down in 25 *Henry VIII.* c. 22. and 28 *H. VIII.* c. 7. as he observed in a marginal Note on the said Comment.

But Sir *John Vaughan* absolutely denied this \*, and affirmed, *That some Marriages within the Levitical Degrees may be lawful †, and that the Levitical Degrees qua such, are set forth by no Act of Parliament ‡.—Nor is it said in any Act of Parliament, that all Marriages within the Levitical Degrees are prohibited by God's Law ||.*

*Many Cases* [he affirmed] *may be found to prove a Marriage may be lawful, though it be within the Levitical Degrees §.*

Which is undoubtedly true, according to his and the Civilians Way of expounding the *Levitical Degrees*.

But then he also affirmed, *That the Act prohibits the Impeaching Marriages only which are absolutely without the Levitical Degrees—\*\* though they are lawful Marriages.* In which I humbly conceive he was mistaken ; for the Act plainly declares and enacts all Marriages to be lawful that are not prohibited by God's Law, and represents it as

\* Hill and Good's Case, Rep. 307, 308.

† Page 305.

‡ Page 319.

|| Ibid. Page 319.

§ Page 321.

\*\* Page 320, 321.

Usurpation and Sin to make any Marriages unlawful that by God's Law are lawful.

And on *Harrison and Burwell's Case* (in the deciding whereof all the Judges of *England* were concerned) it was declared, that some Marriages were forbidden by the Statute of 28 *Henry VIII.* c. 7. as they were not by the *Levitical* Law ; *For within the Meaning of Leviticus, and the constant Practice of the Commonwealth of the Jews, a Man was prohibited not to marry his Wife's Sister, only during her Life ; after he might \**. This was the Determination of all the Judges of *England*, according to Sir *John Vaughan's* own Report of it.

But that which puts it beyond all reasonable Doubt, that the *Levitical* Degrees, as they are commonly understood, cannot be the proper Key to expound this Statute by, is a Determination made by our Legislators themselves, who by Statute 1 *M. Sess.* 2. ch. 1. determined that the Marriage therein mentioned between the King and his Brother's Widow (which hath been commonly taken to be within the *Levitical* Degrees, and certainly was within the Degrees mentioned in the 28 *Henry VIII.* ch. 7.) was in very Deed not prohibited by God's Law ; as by that Statute may herein after more plainly appear. The *Levitical* Degrees indeed, as set forth in Act 28 *Henry VIII.* c. 7. was the Rule as long as that Law was in Force ; but after the Repeal of all that Part of the Act that concerned those *Levitical* Prohibitions, it then, (it is humbly conceived) ceased to be any longer the Rule in this Case : But the Law of God, in general, was then the Rule : And all Marriages that cannot be proved to be contrary to God's Law, are to be deemed lawful ; for *what God hath joined together, let no Man put asunder.*

But, *note*, those that marry (being under Age) without the Consent of their Parents, are not legally married, and therefore are not to be deemed as joined together by God.

\* *Hill and Good's Case* Rep. p. 240, 241. See also *Ventris*, Vol. II. p. 16, 17.

(9.) And that no Person of what Estate, Degree or Condition soever he or she be, shall after the said first Day of the Month of *July* aforesaid, be admitted in any of the Spiritual Courts within this the King's Realm, or any of his Grace's other Lands and Dominions, to any Process, Plea, or Allegation, contrary to this aforesaid Act.

This last Clause of the Act clearly demonstrates, that the spiritual Courts ought not to be suffered to impeach any Marriages that are not prohibited by God's Law on any Pretence whatsoever, whether they are supposed to be within or without the *Levitical* Degrees, according to the vulgar Exposition of them. For the

Words of the Act are, "no Person shall be admitted in any of the Spiritual Courts within this Realm to any Process, Plea, or Allegation contrary to this Act."

By which Words his Majesty's Temporal Courts, and not the Ecclesiastical ones, are plainly made the legal Judges of what Marriages are, or are not prohibited by God's Law; as was determined by all the Judges of *England*, on the forementioned Case, where three Questions were started, which in Substance were;

First, Whether the Marriage then under Consideration, was a lawful Marriage within the Meaning of the Act of 32 *Henry VIII.* c. 38.

Second, Whether the *Temporal Courts* were the proper Judges of it?

Third, Whether the *Temporal Courts* of the King can take Cognizance in general, that it is not an incestuous Marriage by the said Act, and consequently prohibit the questioning of it in the Ecclesiastical Courts?

In Answer to the first Question, it was resolved that the said Marriage was a lawful Marriage *per* 32 *H. VIII.* c. 38.

To the 2d, That—"the Temporal Courts have by

"that

“ that and other Acts of Parliament, full Cognizance of  
 “ Marriages within or without the *Levitical Degrees*.”

To the 3d, “ That as the Law stands at this Time,  
 “ the King’s *Temporal Courts* at *Westminster* have full Cog-  
 “ nizance what Marriages are incestuous or not, accord-  
 “ ing to the Law of the Kingdom, and may prohibit the  
 “ Ecclesiastical Courts from questioning Marriages as  
 “ incestuous, which the said Courts, in their Judgment,  
 “ shall conceive not to be so.”

In discoursing the second Question ’twas said, “ There  
 “ was a Time when the Temporal Courts had no Cog-  
 “ nizance of lawful or unlawful Marriages ; so there was  
 “ a Time when the Ecclesiastical Courts had no Cogni-  
 “ zance of Matters Testamentary, and Probat of Wills  
 “ but the Law-making Power of the Kingdom gave them  
 “ that which they had not before, and the same hath gi-  
 “ ven the Temporal Courts this now, which they had  
 “ not in former Times.”

And after having largely reasoned the Case, and an-  
 swered Objections, concludes that it is not “ consonant  
 “ to Law or common Reason, that they who offend by  
 “ incroaching Jurisdiction against Law, should be the Re-  
 “ dreds allowed by Law only against such Incroachment  
 “ which were to provide against doing wrong by him  
 “ who doth it.”

“ By the Act, no Person of what Estate or Condition  
 “ soever, is to be admitted to any of the Spiritual Courts,  
 “ to any Procefs, Plea, or Allegation, contrary to the  
 “ Act.

“ This Act, therefore, never intended the Ecclesiastick  
 “ Courts should have any judicial Power to determine or  
 “ judge what Marriages were within or without the *Le-  
 “ vitical Degrees*, contrary, or not contrary to the Act,  
 “ when it admits not any *Procefs, Plea, or Allegation* in a  
 “ Spiritual Court, contrary to the *Act*.

“ For it is impossible that Court should have Cogni-  
 “ zance to determine the Lawfulness or Unlawfulness of a  
 “ Marriage, which is forbid to admit *Procefs, Plea, or  
 “ Allegation* against such Marriage, if it be lawful \*.”

The like may be seen in Sir *Peyton Ventris*’s Report of  
 the same Case, who towards the End thereof, after hav-  
 ing mentioned the Objections made by the Civilians,

cnc

\* See *Vaughan*, p. 206—209.



one of which was, that the Temporal Judges could not decide Questions of this Nature, because they did not understand the original Tongues, &c. and it was a Hardship they [*viz. the Spiritual Courts*] should be deprived of their Power; thus concludes, “ There is a full  
 “ and flat Answer to this; this Statute makes it not at  
 “ all cognizable by them, for where any Court has Cognizance, the Party must have Process, &c. But now  
 “ here in the Case of this Statute, it is enacted, That no  
 “ Person, &c. shall be admitted to any of the Spiritual  
 “ Courts, &c. to any Process, Plea, or Allegation, contrary to this aforesaid Act: And therefore all Cognizance of that Nature is taken away from them †.”

Thus you see it is plain and clear from the Statute itself, that not the Ecclesiastical, but his Majesty's Temporal Courts are the proper Judges of what Marriages shall be legally deemed to be contrary to God's Law, and what not so; and that in the Opinion of all the Judges of *England* met together by the King's Order, on Purpose to consider the Case.

Fifth Statute. I proceed now to the *fifth* and last Statute, which touch the Case (*viz. 1 M. Seff. 2d c. 1.*) intituled,

*An Act declaring the Queen's Highness to have been borne in a most just and lawful Matrimonie, and also repealing all Acts of Parliament and Sentences of Divorce made or had to the contrary.*

The Occasion of making of it appears plain enough in the *Preamble* thereof\*, in which  
 you

† *Ventris*, Part II. p. 21.

\* As this Act, tho' never repealed, hath been left out of all our Statute Books that have been published since the Time of *K. Charles*, and therefore probably hath been seen but by few, and perhaps may not be ready at Hand to be consulted by the Generality even of our Students of the Law. I will, therefore, here give my Readers the Substance of it, taken from a Copy there-  
 of

you see our Legislators set forth, “ that Pro-  
 “ cesses of Time had brought *Truth to Light*, and  
 “ that they then understood the *very true State* of  
 “ the

of corrected by the Parliament Roll.—“ Truth (being of her  
 “ own Nature of a most excellent Virtue, Efficacy, Force and  
 “ Working) cannot but by Process of Time break out, and  
 “ shew herself, howsoever for a while she may by the Iniquity  
 “ and Frailty of Man be suppressed and kept close; and be-  
 “ ing revealed and manifested ought to be embraced, ac-  
 “ knowledged, confessed, and professed in all Cases and Mat-  
 “ ters whatsoever, and whomsoever they touch or concern,  
 “ without respect of Persons, but in such Cases and Matters  
 “ especially, as whereby the Glory and Honour of God in  
 “ Heaven (who is the Author of Truth, and Truth itself) is  
 “ to be specially set forth, and whereby also the Honour, Dig-  
 “ nity, Surety, and Preservation of the Prince, and the Ruler  
 “ under God in Earth dependeth, and the Welfare, Profit, and  
 “ special Benefit of the vniuersal People and Body of a Realme  
 “ is to be contained and maintained. We your Highnesses  
 “ most loving, faithful, and obedient Subjects, vnderstanding  
 “ the *very Truth of the State of Matrimony*, between the two  
 “ most excellent Princes of most worthy Memory, King Hen-  
 “ ry VIII. and Queen Katharine, his loving, godly and law-  
 “ ful Wife, your Highnesse lawful Father and Mother, cannot  
 “ but think ourselves most bounden, both by our Duty of Al-  
 “ legiance to your Majesty, and of Conscience towards God,  
 “ to shew unto your Highnesse, first how that the same Ma-  
 “ trimony being contracted, solemnized, and consummated, by  
 “ the Agreement and Assent of both their most noble Parents,  
 “ by the Counsel and Advice of the most wise and gravest Men  
 “ of both their Realmes, by the deliberate and mature Consi-  
 “ deration and Consent of the best and most notable Men in  
 “ Learning in those Days of Christendom, did even so conti-  
 “ nue by the Space of twenty Years and more between them,  
 “ to the Pleasure of Almighty God, and Satisfaction of the  
 “ World, the Joy and Comfort of all the Subjects of this  
 “ Realme, and to their own Repose and good Contentment, God  
 “ giving for a sure Token and Testimony of his good Accep-  
 “ tation of the same, not only godly Fruit, your Highnesses  
 “ *most noble Person* (whom we beseech the Almighty and Ever-  
 “ living God, long to prosper and preserve here amongst us)  
 “ and other Issue also, whom it hath pleased God to take out  
 “ of this transitory Life-vnto his eternal Glory; but also send-  
 “ ing

“ the Marriage in the Act mentioned (which was  
 “ a Marriage betwixt the King and his Sister-in-  
 “ law, *viz.* his Brother *Arthur's* Widow; )—  
 “ that

“ ing us a happier, flourishing, and most prosperous Common-  
 “ wealth in all Things. *And then afterwards*, how that the  
 “ malicious and perverse Affections of some (*a very few Persons*)  
 “ envying the great Felicity, wherein, by the Goodness of God,  
 “ your said most noble Father and Mother, and their good  
 “ Subjects lived and continued in many Years, did for their  
 “ singular Glory, and vain Reputation, conceive sundry sub-  
 “ tile and disloyal Practices, for the Interruption and Breach  
 “ of the said most lawful and godly Concord : And travelling  
 “ to put the same in Vre, devised first to insinuate a Scruple  
 “ into the King your Father's Conscience, of an unlawful  
 “ Marriage between him and his most lawful Wife, the Queen,  
 “ your Highnesses Mother, pretending for the Ground thereof,  
 “ that the same was against the Word of God ; and there-  
 “ upon ceased not to perswade continually unto the said King  
 “ your Father, that he could not without Danger of the Losse  
 “ of his Soule continue with his said most lawful Wife, but  
 “ must be separated and divorced from her.

“ And to this Intent caused the *Seales*, as well of certaine  
 “ *Universities in Italy and France* to be gotten (as it were for a  
 “ Testimony) by the *Corruption with Money* of a few light  
 “ Persons, Schollars of the same Vniversities, as also the *Seales*  
 “ of the *Universities of this Realme* to be obtained by great Tra-  
 “ well, sinister Working, secret Threatnings, and Entreatings of  
 “ some Men of Authority, specially sent at that Time thither  
 “ for the same Purposes. And how that finally, *Thomas Cran-*  
 “ *mer*, then newly made Archbishop of *Canterbury*, most un-  
 “ godly, and against all Lawes, Equity, and Conscience, pro-  
 “ ficuting the said wicked Device of Divorce, and Separation  
 “ of the said King your Father, and Queen your Mother,  
 “ called before him (*ex officio*) the Hearing of the said Matter  
 “ of Marriage, and takeing his Foundation partly upon his own  
 “ *unadvised Judgment of the Scripture*, joining therewith the *pre-*  
 “ *tended Testimonies of the said Vniuersities*, and partly upon bare and  
 “ most untrue Conjectures, gathered and admitted by him upon  
 “ Matters of no Strength or Effect, but only by Supposall, and  
 “ without admitting or hearing any Thing that could be said by  
 “ the Queen your Mother, or by any other on her Behalfe,  
 “ in the Absence of the said late Queen your Mother, pro-  
 “ ceeded, pronounced, discerned, declared, and gave Sentence,  
 “ the

“ that the said Marriage *in very Deed was not*  
 “ *prohibited by God’s Law*, and therefore could  
 “ not by any Reason or Equity be *so spotted*—  
 “ but

“ the same most lawfull and undoubted Matrimony to be  
 “ nought, and to be contracted against God’s Law, and of no  
 “ Value, but lacking the Strength of the Law. And the said  
 “ most noble King your Father, and the said noble Queen your  
 “ Mother, so married together did separate and divorce, and  
 “ the same your most noble Father, King *Henry VIII.* and the  
 “ said most noble Queen your Mother, from the Bands of the  
 “ same *most lawfull Matrimony* did pronounce and declare, by  
 “ the same his unlawfull Sentence, to be free, discharged, and  
 “ sett at Liberty.

“ Which Sentence and Judgment so given by unlawfull and  
 “ corrupt Meanes and Wayes, by the said Archbishop of *Can-*  
 “ *terbury*, was afterwards. upon certain Affections, ratified and  
 “ confirmed by two severall Acts, the one made in the 25th  
 “ Year of the Reigne of the said King, your Highness Father,  
 “ and entituled, An Act declaring the Stablistment of the Suc-  
 “ cession of the King’s most Royall Majesty of the Imperiall  
 “ Crown of this Realme. The other Act of Parliament made  
 “ in the 28th Yeare of the said King, your Highnesse Father,  
 “ entituled, An Act for the Stablistment of the Succession of  
 “ the Imperiall Crown of this Realme. In which said two  
 “ Acts was contained the Illegitimation of your most noble Per-  
 “ son, which *your said* most noble Person, being borne in so  
 “ solemne a Marriage, so oppenly approved in the World, and  
 “ with so good Faith both first contracted, and also by so many  
 “ Yeares continued between your said most noble Parents, and  
 “ the *same Marriage in very Deed not being prohibited by the Law*  
 “ *of God, could not, by any Reason or Equity in this Case be so*  
 “ *spotted.* And now we your Highnesse said most loving, faith-  
 “ full, and obedient Subjects, of a godly Heart and true  
 “ Meaning, freely and franckly, without Feare, Fantasie, or  
 “ other corrupt Motion, or sensuall Affection, considering that  
 “ this aforesaid Marriage had his Beginning of God, and by  
 “ him was continued, and therefore was ever, and is to be ta-  
 “ ken for a most true, just, lawfull, and to all Respects, a sin-  
 “ cere and perfect Marriage, nor could ne ought, by any Man’s  
 “ Power, Authority, or Jurisdiction, be dissolved, broken or se-  
 “ parated (for whom God joyneth, no Man can, ne ought to  
 “ put asunder.) And considering also, how during the same  
 “ Marriage in godly Concord, the Realme, in all Degrees,  
 “ flourished,



“ but — to be taken for a *most just, lawful, and*  
 “ to all respects, a *sincere and perfect Marriage,*  
 “ that could not, nor ought, by any Man’s  
 “ Power,

“ flourished, to the Glory of God, to the Honour of the Prince,  
 “ and the great Reputation of the Subjects of the same, and  
 “ on the other Side, understanding manifestly, that the Ground  
 “ of the said Device, and Practice of the said Divorce *proceed-*  
 “ *ed first, of Malice and Vain-glory,* and after was prosecuted  
 “ and followed of *fond Affection and sensual Fantasie,* and finally  
 “ executed and put in Effect by *Corruption, Ignorance, and Flat-*  
 “ *tery.* And not only feeling, to our great Sorrow, Damage,  
 “ and Regret, how shamefull Ignominies, Rebukes, Slanders  
 “ Contempts ; yea, what Death, Pestilence, Warres, Disobe-  
 “ diences, Rebellions, Insurrections, and divers other great and  
 “ grievous Plagues, God of his Justice hath sent upon us, ever  
 “ sythence this said ungodly Purpose was first begun and prac-  
 “ tised : but also seeing evidently before our Eyes, that un-  
 “ lesse so great an Unjustice as this hath been, and yet con-  
 “ tinueth, be redubbed, and that the said false and wrongfull  
 “ Processe, Judgment, and Sentence, with their Dependencies,  
 “ be repealed and revoked, nothing is less to be doubted, than  
 “ that greater Plagues and Strokes are like to encrease, and  
 “ continue daily more and more within this Realme ; do be-  
 “ seech your Most Excellent Majesty, as well in respect of  
 “ your own Honour, Dignity, and just Title, as for Truth’s  
 “ Sake, wherewith (we doubt not) but your Highnesse also will be  
 “ specially moved in Conscience, and also for the entire Love,  
 “ Favour, and Affection, which your Majesty beareth to the  
 “ Commonwealth of this Realme, and for the good Peace,  
 “ Unity, and Rest of us, your most bounden Subjects, and our  
 “ Posterity, that it may be enacted by your Highnesse, with  
 “ the Consent of the Lords Spiritual and Temporall, and the  
 “ Commons in this present Parliament assembled.

“ And be it enacted by the Authority of this present Par-  
 “ liament, That all and every Decree, Sentence, and Judg-  
 “ ment of Divorce and Separation, between the said King your  
 “ Father, and the said late Queen your Mother, and all the  
 “ Processe commenced, followed, given, made, or promulged  
 “ by the said *Thomas Cranmer,* then Archbishop of *Canterbury,*  
 “ or any other Person or Persons whatsoever, whereby the same  
 “ most just, pure, and lawfull Marriage, between the said late King  
 “ your Father, and the said late Queen your Mother, was, or  
 “ is pronounced, or in anywise declared to be unlawfull, or  
 “ unjust,

“ Power, *Authority or Jurisdiction be dissolved,*  
 “ *broken or separated.*

And on the other Side, they asserted—they understood manifestly that the *Ground of the said Divorce* proceeded first of *Malice \* and Vain-glory*, and after was prosecuted and followed

“ unjust, or against the Law of God, be, and shall be, from  
 “ the Beginning, and from henceforth, of no Force, Validity,  
 “ or Effect, but utterly nought, void, frustrate, and adnihilate,  
 “ to all Intents, Construtions, and Purposes, as if the same  
 “ had never been given or pronounced.

“ And be it also enacted by the Authority aforesaid, that  
 “ as well the said Act of Parliament, intituled, *An Act declar-*  
 “ *ing the Establishment of the Succession of the King's most Royall*  
 “ *Majesty of the Imperiall Crowne of this Realme, made in the*  
 “ *25th Year of the King your Father, be repealed, and be void,*  
 “ *and of none Effect*; as also, all and every such *Clauses, Ar-*  
 “ *ticles, Branches, and Matters contained and expressed in the*  
 “ *aforesaid Act of Parliament made in the said 28th Yeare of the*  
 “ *Reigne of the said late King your Father; or in any other Act or*  
 “ *Acts of Parliament, as whereby your Highnesse is named or*  
 “ *declared to be illegitimate, or the said Marriage between the*  
 “ *said King your Father, and the said Queen your Mother, is de-*  
 “ *clared to be against the Word of God, or by any Meanes un-*  
 “ *lawfull, shall be and be repealed, and be void, and of no Force, nor*  
 “ *Effect, to all Intents, Construtions, and Purposes, as if the same*  
 “ *Sentence, or Acts of Parliament, had never be had ne made.*  
 “ And that the said Marriage had and solemnized betwixt  
 “ your said most noble Father, King Henry, and your said most  
 “ noble Mother, Queen Katharine, shall be *definitively, cleere-*  
 “ *ly, and absolutely declared, deemed, and adjudged to bee, and*  
 “ *stand with God's Law, and his most holy Word, and to bee ac-*  
 “ *cepted, reputed, and taken of good Effect, and Validity, to all*  
 “ *Intents and Purposes.*

\* Cardinal *Wolsey's Malice* against the Queen, who re-  
 proved him for his wicked Life, as also against the Emperor,  
 who was her Nephew, for having deceived him by *false Pro-*  
*misses* of the Bishoprick of *Toledo*, and the *Popedome*. See *Cam-*  
*den's History of Q. Elizabeth*. Introduction. And *Sandford's*  
*Genealogical History*, p. 486. *Burnet's History of the Refor-*  
*mation*, B. 1. p. 4. and B. 2. p. 37, 38.

lowed of *fond Affection, and sensual Fantefie* \*, and finally executed and put in Effect by *Corruption, Ignorance, and Flattery*; and particularly that the Seals of the Universities in *Italy and France* were gotten by *Corruption with Money* †;—that the Seals of the Universities of this Realm were obtained by great Travel, finifter Workings, fecret Threatnings, and Intreatings

\* See a Pamphlet printed for J. Churchill, at the Swan in Pater-noster Row, Anno 1714. Intitled, *Love Letters from King Henry VIII. to Anne Boleyn*. And in particular her last Letter to the King from the Tower, which is also printed in Bishop Burnet's History of the Reformation, Vol. I. Collection of Records, B. 3. No. 4. p. 154, 155; in which are these Words,—“ For the Ground of my Preferment being on no surer Foundation than your Grace's *Fancy*, the least Alteration I knew, was fit and sufficient to draw that *Fancy* to some other Subject.”

† This Bishop Burnet endeavours to prove a Mistake, and labours hard to persuade his Readers to believe it. But he drops some Things in his History, which I take to be stronger Evidence of what is by our Legislators here asserted than all he has advanced to the contrary.

For first he acknowledged, that Crook, who was employed in that Affair in *Italy*, in many of his Letters says, “ That if he had Money enough, he did not doubt but he should get the Hands of all the Divines in *Italy*; for he found the greatest Part of them all mercenary.” History of Reformation, Part I. B. 4. p. 90. And in a Letter of Crook's, which he hath given us at large in the Collection of Records, No. 33. p. 88. Crook says, the Seal of the University of *Padua* cost him 100 Crowns; and that the Canonist of *Ferrara* had determined for the King, yet asked for their Seal 150 Crowns, which he refused to give that Day, but would have done it afterward, but then was refused, and could not afterwards obtain it. Hist. of Ref. p. 91.

Secretary Knight, and Mr. Gardner, employed by the King, gave Cardinal *Sanctorum Quatuor* 4000 Crowns, and his Secretary 30 Crowns, for the Furtherance of the King's Causes, viz. relating to the Divorce. See Knight's Letter to Cardinal Wolsey, in the Collection of Records, No. 4. p. 21, 22, 23. Ibid. to the King, p. 24, 25.

treatings of Men of Authority sent thither *for that Purpose* \*.

And that the said Divorce founded partly on *unadvised Judgment* of the *Scripture*, joined with the pretended Testimonies of the said Universities, was prosecuted *contrary to Law, Equity, and Conscience*.

Here it is plain what the *Judgment* of our *Legislators*, after *mature Consideration* of the *Case*, was. And it is very obvious they did not ground this their *Judgment* of that Marriage on the *Pope's Dispensation*, as those of the Papacy did †; but on its *not being prohibited by God's Law*, and that the Divorce was thro' an *unadvised* [or mistaken] *Judgment of the Scriptures*, &c. And it seems to me evident, it *continued to be their Judgment* in the Time of *Queen Elizabeth*, when the Spirit of the Reformation revived: For after the Marriage of *Queen Mary* with *Philip of Spain*, when Popery again recovered Strength here ‡, in order to restore the Popish Clergy to their former Power, and subject the People again to them, all the Acts relating to this Affair were repealed, (this last mentioned one of the first of *Queen Mary* only excepted) and also all

\* The Truth of this is evident from the historical Accounts we have of it. See Bishop *Burnet's* own Account of the Affair at *Oxford*. Hist. Vol. I. p. 85, 16.

And of that at *Cambridge*, ditto. p. 86, 87, and more largely in *Gardiner* and *Fox's* Letter. Collection of Records, No. 32, from p. 85, to 87.

† Particularly Cardinal *Pool*. Hist. of Ref. V. II.

‡ *Viz.* in the first and 2d Years of *P.* and *M.*



other Acts made to abridge the Power of the See of *Rome* § ; and the Case of Marriage was brought back to the same State it was in before any Act of Parliament was made concerning it. But after that Queen's Death, *viz.* in the first Year of Queen *Elizabeth*, our Legislators *revived the forementioned Statutes of 28 Henry VIII. c. 16. concerning Licences and Dispensations from the See of Rome, and 32 Henry VIII. c. 38, aforementioned, which enacted, that all Marriages not prohibited by God's Law, should be lawful ; and many other Acts made against Popery, that were repealed by the said Act of 1 and 2 of P. and M. c. 8. But did not revive the Act of 25 of Henry VIII. Chap. 22. tho' it is now fairly printed in our new Statute Books, as before observed ; nor, as I humbly conceive, that of the 28th H. VIII. c. 7. [for Reasons, which shall be hereafter mentioned ;] but rather confirmed the Repeal of it.*

Yet it must be acknowledged as to this last mentioned Act, that the Point hath been *disputed*. And it hath been asserted and adjudged by a very great Authority, no less than that of the Honourable Court of Common Pleas \*, that the Act of 28 *Henry VIII. c. 7.* was revived by the first of *Elizabeth*, c. 1. But upon what Grounds, and how rightly it was so adjudged, is the next Thing, with humble Submission, to be examined.

§. *Viz.* by Act 8th of 1 and 2 of P. and M. c. 8.

\* In Trin. Term, 25 K. Ch. II. Rot. 1488, *Vaugh.* p. 302:

*The Case was thus ; One Thomas Hill, after the Death of his first Wife, married her surviving Sister, upon which being prosecuted in an Ecclesiastical Court, he sued out a Prohibition from his Majesty's Court of Common Pleas, before which the Case was heard, Sir John Vaughan being Lord Chief Justice. " The Question was, " Whether the Marriage of the Husband with " his Wife's Sister, after the Wife's Death, be " such a Marriage as by the Act of 32 Henry " VIII. the Temporal Courts may prohibit the " impeaching or drawing it into Question in " the Spiritual Courts, in order to a Divorce " or Separation of the Parties ?" Rep. p. 305.*

In Answer to which, Sir John Vaughan said, He conceived they could not for these Reasons.

*Sir John Vaughan's Words.*

First, I affirm, (said he) this Marriage to be expressly prohibited in 18th of *Leviticus*, and then it must be within the *Levitical* Degrees.

*NOTES.*

This is directly contrary to what was observed and determined not five Years before by all the Judges of England, Sir J. Vaughan himself being one of them, on Harrison and Burwell's Case, as by his own Report of it, p. 241, where are these Words :

" —Within the  
" Meaning of *Leviticus*, and the Practice of the Common-  
" wealth of the Jews, a Man was prohibited, not to mar-  
" ry his Wife's Sister, only during her Life, after he might.

Sir John Vaughan's Words.

## NOTES.

Second, If it were not so prohibited, yet it is not a Marriage without the *Levitical* Degrees, but within them; and therefore no Prohibition will lye for impeaching it; for Marriages not to be impeached, must be without the Degrees, *and for that some Marriages within the Degrees may be lawful.*

This Affirmation I take to be *directly* contrary to the forementioned Act of 32 of K. Henry VIII. ch. 38. For in that Act (as hath been herein before shewn) it is as plainly enacted and declared, as it possibly can be, That all *Marriages that be not prohibited by God's Law, shall be deemed, judged, and taken to be lawful, good, just, and indissolvable.*

And lastly, it enacts, "That no Person of what Estate, Degree, or Condition soever, shall be *admitted in any of the Spiritual Courts—within this Realm—to any Process, Plea, or Allegation, contrary to this Act.*" Therefore, 'tis plain, the King's Temporal Courts, may prohibit the Ecclesiastical Courts, when

they attempt to impeach any Marriages which are *not in their Judgment prohibited by God's Law.*

Thirdly,

*Sir John Vaughan's Words.*

Thirdly, That if this Marriage be without the *Levitical* Degrees, yet it is a Marriage prohibited by God's Law, and therefore to be impeached; notwithstanding the Statute of 32 *Henry VIII.* whose Words are, No Marriage, God's Law excepted, shall be impeached, without the *Levitical* Degrees, *Rep. p. 305.*

## NOTES.

If this his third Assertion could have been supported by good Evidence, it would have been full to the Purpose.

It would then in *very Deed* have proved that the said Marriage might justly and reasonably have been impeached. But *how does he do this?*

Is what he says sufficient Evidence of it? Pray observe, how he endeavours to support this his third Assertion.

When an Act of Parliament declares a Marriage to be against God's Law, it must be admitted, in all Courts and Proceedings of this Kingdom to be so.

This I readily grant; and let me add, When an Act of Parliament declares a Marriage to be in *very Deed* not prohibited by the Law of God, as *1 M. Sess. 2. c. 1.* did a Marriage contracted between the King and his Brother's Widow, (which as to Near-

ness of Kindred is the very same with that in *this Case*) it must in like Manner be admitted *not to be so.*



*Sir John Vaughan's Words.*

By an Act 25 H. VIII. c. 22. intituled, An Act declaring the Establishment of the Succession of the King's most Royal Majesty in the Imperial Crown of this Realm.

Among fundry Marriages declared by that Act to be Marriages within the Degrees of Marriage prohibited by God's Law, the Marriage of a Man with his Wife's Sister is expressly declared to be prohibited by God's Law, and that a Divorce should be of such Marriage, if any such were.

But this Act is *expressly repealed* by 28 Henry VIII. c. 7. intituled, An Act for the Establishment of the Imperial Crown of this Realm.

*He next proceeds, p. 323. to cite that Part of 28 Henry VIII. c. 7. which declares what Marriages were thereby asserted to be prohibited by God's Law, which is the same I have given you herein before. p. 91. 92*

*And*

## NOTES.

Here you see he cites the repealed Act of the 25 H. VIII. c. 22. (declaring that Marriage to be prohibited by God's Law) *as Evidence in this Case* : But he plainly acknowledges in the

Next Paragraph, that this Act is *expressly repealed* by 28 Henry VIII. c. 7.

Why then does he cite it? He himself tells us in his own Report of this Case, but two Pages further on, that "An Act repealed is of no Effect, more than if it had been never made." p. 325.

Sir John Vaughan's Words.

NOTES.

*And then he adds, p. 324 of his Reports.*

But this Clause also of this Act of 28 H. VIII. as some conceive, is repealed by 1 and 2 P. and M. c. 8. in these Words.

*And also all that Part of the Act made in the said 28 H. 8. intitled, An Act for the Establishment of the Succession of the Imperial Crown of the Realm, that concerneth a Prohibition to marry within the Degrees expressed in the said Act, shall from henceforth be repealed, made frustrate, void, and of none Effect.*

By the Act 1 and 2 P. and M. two other Laws are likewise repealed, which concern the Question before us, viz. An Act in 28 H. VIII. c. 16. intitled, An Act for the Release of such as have obtained pretended Licences and Dispensations from the See of Rome. And the Act of 32 H. VIII. c. 38. which have been often mentioned.

Is it not plain This Clause, and all that Part of this Act that concern the Question, is repealed, by the Words which he here cites?

By that Act not only the two Laws he here mentions, which concern the Question in Hand, but also several other Laws which were made to take away the Power of the Pope and Popish Clergy in this Land, were repealed, and their Power again restored, as by the said Act, relation being thereunto had, may plainly appear.

Sir John Vaughan's Words.

But these *two last* are revived by the Act of 1 Elizabeth, c. 1. and in Force; but neither the Act of 25 Henry VIII. nor 28 Henry VIII. c. 7. are revived in express Terms; and not only so, but the Act of 1 Eliz. c. 1. hath this negative Clause, That all other Laws and Statutes, and the Branches and Clauses of any Act or Statute repealed by the said Act of Repeal made in the Time of the said King Philip and Queen Mary, and not in this present Act specially mentioned and revived, shall stand, remain, and be repealed and void, in such like Manner and Form as they were before the making of this Act.

Whence it follows, That this Marriage is not now proved to be against God's Law, by either of these repealed Statutes of 25 Henry VIII. or 28 Henry VIII. c. 7. unless it be made out, that one of them at least remains at this Day in Force. And as for that,

## NOTES,

Pray observe, what he here says. It is the plain Truth.

You see he here acknowledges that neither of the Acts, viz. of 25 H. VIII. nor that of 28 H. VIII. c. 7. (now under Examination) are revived in express Terms; let me therefore add, if not in express Terms, then not at all.

If this Act now under Consideration is not therein specially mentioned and revived, it is still repealed and void by Virtue of the Clause of the 1 Eliz. which he here cites.

Here you see he speaks of both those Acts as repealed Acts, as it is plain they were; and generally so deemed till this Time. Let us see what he has to offer to the contrary.

The

*Sir John Vaughan's Words.*

The Act of 28 *H. VIII.* c. 16. which makes void all Dispensations from the See of *Rome*, and expressly revived by 1 *Eliz.* and all Branches, Words, and Sentences thereof, hath these Words, *As a Grace of the King to divers of his Subjects, who had married by Dispensation*, notwithstanding this Act made all Dispensations from *Rome* void.

All Marriages had from the third of *November 26 H. VIII.* for which no Divorce or Separation is had, and which Marriages be not prohibited by God's Laws, limited and declared in the Act made this present Parliament for establishing the King's Succession, or otherwise by Holy Scriptures, shall be good.

By which Words I conceive the Clause of 28 *Henry VIII.* c. 7. repealed in *Queen Mary's* Time is again revived.

It may be objected, the Clause of 28 *Henry VIII.* c. 7. concerning Marriages prohibited by God's Law, continues

## NOTES.

The Act of 28 *Henry VIII.* c. 16. which *Sir John Vaughan* here mentions is indeed expressly revived by the 1 *Eliz.* and hath the Words which he here cites, *but that cannot revive the Act of the 28 H. VIII. c. 7.* which relates to the Case in Hand, *no, nor any Clause of it, as (I humbly conceive) will be herein after plainly shown.*

Pray mind this Objection which he here mentions, it is a weighty one; and observe how he endeavours to answer it.



*nues still repealed, because it is not specially mentioned to be revived by the Act of 1 Eliz. And therefore no Act is in Force declaring the Husband's Marriage with his Wife's Sister to be prohibited by God's Law.*

Answ. An *Act repealed is of no Effect, more than if it had been never made.*

By the Act of 28 H. VIII. c. 7. All Marriages prohibited by God's Law, limited and declared by the Clause of that Act, were unlawful, notwithstanding any Dispensation had *before the Repeal of that Clause.*

By the Reviver in 1 Eliz. of 28 H. VIII. c. 16. and every Clause in it, all Marriages prohibited by God's Law, limited and declared by 28 Henry VIII. c. 7. were again unlawful, as before the Repeal, notwithstanding any Dispensation.

There-

The Truth of this Clause I think was never denied.

By that Act all the Marriages therein limited and declared to be prohibited by God's Laws were enacted by Authority of Parliament to be unlawful, *before the Repeal of all that Part of it,* but after, that Repeal it was of *no Effect more than if it had been never made.*

The revived Act of the 28 H. VIII. c. 16. *enacts no such Thing, nor any Thing like it,* it only enacts, that the Marriages not declared by the Act of the 28 H. VIII. c. 7. *to be prohibited by God's Law,* should

*Sir John Vaughan's Words.*

## NOTES.

*should be good.* But it enacted nothing concerning the Marriages that were therein mentioned, but left them in the same State they were in before that Revival, viz. on the Foot of the Statutes herein before mentioned, and set forth.

How can the Revival of one Act revive another that enacts nothing concerning it? The

negative Clause in the first of *Elizabeth* before cited by Sir *John Vaughan* himself [*which see in p. 120. hereof*] was added in that Statute, on Purpose to prevent any such Construction. Therefore I think it is plain, that no such Consequence can follow from the Premises by him here advanced.

*If it had been enacted by Parliament after the Repeal of the Clause in 28 H. VIII. c. 7. That all Marriages prohibited by God's Law, limited and declared by 28 H. VIII. c. 7. should be unlawful, notwithstanding any Dispensation, that enacting had revived the Clause in 28 H. VIII. c. 7.*

*If it had been so enacted after that Repeal, it would, no doubt, have been equivalent to such a Revival: But in very Deed, no such Thing was enacted by that Revival, therefore it could have no such Effect.*

Therefore the same Thing being enacted by the Revival  
of

of 28 H. VIII. c. 16. must have the same Effect of reviving that Clause in 28 H. VIII. c. 7.

Pray observe how he goes on, endeavouring to answer the Objection, in order further to clear up the Point,

I will put it for more clearness, by Way of a Case; A Man before the third of November 26 H. VIII. by Dispensation from Rome, had married *his Wife's Sister's Daughter*, which Marriage was prohibited by the *Canons of the Church*, and no Divorce had been attempted in the Case, until after 1 Eliz. and the Reviver of the Statute of 28 H. VIII. c. 16. which made void all Dispensations from Rome.

It is plain, *That this Marriage being not prohibited by God's Law*, limited and declared in the Act 28 H. VIII. c. 7. was by the express Words of the revived Act of 28 H. VIII. c. 16. a Marriage to continue good without Separation, notwithstanding all Dis-

I have nothing to object against what he asserts in this Paragraph: But desire my Reader to take Notice, *that he here asserts that the Marriage of the Wife's Sister's Daughter, tho' prohibited by the Canons of the Church, is not a Marriage prohibited by God's Law; but was by the express Words of that revived Act a Marriage to continue good, as not excepted out of the Grace intended by that Act. Now all Marriages prohibited by Holy Scripture, as well as all Marriages mentioned to be prohibited by God's Law, by the Acts of 28 H. VIII. c. 7. were excepted out*

*Sir John Vaughan's Words.*

Dispensations from *Rome* were nulled; because it was *no Marriage excepted* out of the Grace intended and given by that Act to the King's Subjects, married by Dispensation before *November 3, 26 H. VIII.* and not then separated.

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out of the Grace intended by that Act. It must therefore be *Sir John Vaughan's Judgment*, that *that Marriage was not prohibited by Holy Scripture.* And yet many Persons have been prosecuted in Ecclesiastical Courts for *Marriage in that Degree:* And most deplorable have been the Mischiefs that sometimes have ensued thereon: Marriages which might have proved very happy, have been *dissolved*, and Families *utterly ruined* on that Account. Some have applied to the King's Temporal Courts for Redress in the Case: And tho' we have perhaps *two or three* Instances of Persons that have been relieved; yet generally the Doctors of the Civil Law have over-

borne them: notwithstanding the Act of the *32 H. VIII. c. 38.* enacts, that *all Marriages not prohibited by God's Law shall be lawful*, and that no Persons whatsoever shall be admitted to any Spiritual Court within the Realm to any Process, &c. contrary to that Act.



*Sir John Vaughan's Words.*

But if a Marriage before the Third of *November 26 H. VIII.* had been by Dispensation between the Brother and Sister, or as this Case is between the Husband and his Wife's Sister, and no Separation attempted, until after 1 *Eliz.* and the Reviver of the Act of 28 *H. VIII. c. 16.* these Marriages were not to continue good, and without Separation by 28 *H. VIII. c. 16.* because they were Marriages particularly excepted out of the Grace granted by that Act, as being prohibited by God's Law, limited and declared in the Act of 28 *H. VIII. c. 7.* which proves 28 *H. VIII. c. 7.* to be in Force by the Reviver of 28 *H. VIII. c. 16.* and consequently the Marriage in Question to be clearly against God's Law, which is the Thing to be proved.

*hibited by God's Law.* As I conceive I have herein before fully and clearly proved: And thereunto let me add the Opinion of all the Judges of England, as delivered by the Mouth of the same Sir John Vaughan, but a few Years before, on *Harrison and Burwell's Case*; as by his own Report

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It is true, if a Marriage had so been between a Man and his Wife's Sister, it was not to continue good and without Separation by Force and Virtue of the Act of the 28 *H. VIII. c. 16.* because it was not comprehended within that Act any more than it was in any other Act wherein it is not mentioned. But as, on one Hand, it was not to continue good by Force of that Act, on the other Hand, it was not to be made void, nor the Parties separated by Force thereof; for no such Thing is enacted therein.

But it is plain to me, It was to continue good, and without Separation by Force of the Act of 28 *H. VIII. c. 38.* because it is a Marriage not pro-

port of it Page 241. where are these Words, “ Within  
 “ the Meaning of *Leviticus*, and the Practice of the Com-  
 “ monwealth of the *Jews*, a Man was prohibited not  
 “ to marry his Wife’s Sister, *only during her Life*,  
 “ *after he might*. So the Text is, *Thou shalt not*  
 “ *take a Wife with her Sister during her Life to vex her*,  
 “ &c.”

Therefore all that Sir *John Vaughan* has said on this  
 Point, *does not prove* the Act of 28 *H. VIII.* c. 7. to be  
 in Force by the Reviver of 28 *H. VIII.* c. 16. nor that the  
 Marriage then in Question was *contrary to God’s Law*: no!  
 nor any Thing at all concerning that Marriage. Conse-  
 quently the *Objection* by him started is not answered.

For let it be remembered, The *Objection* was “ The  
 “ Clause of 28 *H. VIII.* c. 7. concerning Marriages pro-  
 “ hibited by God’s Law, continues still repealed, because  
 “ it is not *specially mentioned to be revived* by the Act of  
 “ 1 *Eliz.* And therefore no Act is in Force declaring the  
 “ Husband’s Marriage with the Wife’s Sister to be pro-  
 “ hibited by God’s Law.”

The whole Paragraph of the reviving Act of the 1 *Eliz.*  
 to which this *Objection* refers, is as followeth. Par. 13.  
 “ — Enacted, by the Authority aforesaid, that all other  
 “ Laws and Statutes, and the Branches and Clauses of any  
 “ Act or Statute repealed and made void by the said Act of  
 “ Repeal made in the Time of the said late King *Philip*  
 “ and Queen *Mary*, and not in this present Act *specially*  
 “ *mentioned and revived*, shall stand, remain and be re-  
 “ *pealed and void*, in like Manner and Form as they were  
 “ *before the making of this Act*; any thing herein contained  
 “ to the contrary notwithstanding.”

The plain Question on the Foot of the *Objection* is,  
 whether that Part of the Act of 28 *H. VIII.* c. 7. which  
 concerns the Prohibitions to marry within the Degrees  
 thereby prohibited, is *therein specially mentioned and revived*,  
*or not*: If it is not therein mentioned, it is plain it is not  
 thereby revived. And that is not therein mentioned, *viz.*  
 in the Act 1 *Eliz.* may be seen by any one that will please  
 to read that Act with Attention. And is plainly enough  
 acknowledged by Sir *John Vaughan* himself in the Words  
 before recited, *viz.* — Neither the Act of 25 *H. VIII.* nor  
 28 *H. VIII.* c. 7. are revived in express Terms, &c. It  
 therefore clearly followeth that the said Act is so far from  
 being

*being revived by the 1 of Eliz. that on the contrary the Repeal thereof is thereby confirmed.*

I cannot think Sir *John Vaughan* was well satisfied with his own arguing for this Reviver; for he laid no Manner of Strefs on it, but took another Method quite contrary to the former, to endeavour to shew that that Part of the Statute which related to the Point then in Dispute was in Force; for hitherto, you see, he supposed it had been *repealed*, and *attempted to prove it was again revived*: But next, he endeavours to shew it was *never repealed*. Let us examine what he says in Support of that.

*Sir John Vaughan's Words.*

In the Statute 28 *H. VIII.* c. 7. there are *two Clauses* concerning Marriages, the first declaring certain Marriages there recited to be within the Degrees prohibited by God's Law, which Clause concerns the present Question, and is before cited.

The second Clause, in these Words, Be it therefore enacted, that no Person or Persons, Subjects or Resiants of this Realm, or in any your Dominions, of what Estate, Degree or Degrees soever they be, shall from henceforth marry within the Degrees afore rehearsed, what Pretence soever shall be made to the contrary thereof.

Then it proceeds,

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There are at least *three Clauses* concerning Marriages in that Act.

*N.B.* He saith this first Clause concerneth the present Question, which was, Whether the Marriage then in Dispute, was prohibited by God's Law, or not: It is plain it must therefore be included in the general Words of Repeal as well as the following ones.

That

That if there were any Divorce or Separation made of any such Marriages, by the Archbishops or Ministers of the Church of *England*, such Separation should remain good, and not be revokeable by any Authority; and the Children procreated under such unlawful Marriage should be illegitimate.

And if any such Marriages were in any the King's Dominions without Separation, that there should be a Separation from the Bonds of such unlawful Marriage.

Now we must observe the Act of 1 and 2 *Phil.* and *Mary.* c. 8. doth not repeal this Act entirely of 28 *H.* VIII. c. 7. but repeals *only one Clause of it*; the Words of which Clause of Repeal are before cited, and manifest this second Clause of the Act of 28 *H.* 8. and not the first, to be the Clause intended to be repealed.

For there was no Reason to repeal the Clause declaratory of Marriages prohibited by  
K God's

It is true, indeed, the Act of 2 and 3 *Phil.* and *Mary* did not repeal it entirely; for it did not repeal that Part of it that related to the Settlement of the Crown, viz. on the King and the Heirs of his Body by Queen *Jane*, &c. But it clearly and plainly repealed all that Part of it which concerned the Prohibition of Marriages within the Degrees therein men-



*Sir John Vaughan's Words.*

God's Law, which the Church of *Rome* always acknowledged; nor do the Words of Repeal import any Thing concerning Marriages within Degrees prohibited by God's Law.

But (as the Time then was) there was Reason to repeal a Clause, enacting all Separations of such Marriages with which the Pope had dispensed, should remain good against his Authority; and that such Marriages with which he had dispensed, not yet separated, should be separated.

And the Words of the Clause of Repeal manifest the second Clause to be intended, *viz.* all that Part of the Act made in the said 28th Year of King *Henry VIII.* which concerneth a Prohibition to marry within the Degrees expressed in the said Act, shall be repealed, &c. As

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mentioned, and not one Clause of it only as is here asserted, for there is no mention of one Clause only, but of all that Part, &c. *viz.* all the Clauses that concerned that Point.

*Sir John Vaughan's* Reasoning here is wonderful! I will set before the Reader the late Bishop *Gibson's* Observations on it in his Codex.--“Against this Distinction it may be observed, that the Enumeration of Degrees not discernible by the Pope, which was begun and carried on 25 and 28 *H. VIII.* was in order to disannul the King's Marriage with this Queen's Mother, and in Effect to bastardise the Queen; whose Parliament

therefore cannot well be presumed to have spared these two Clauses (9 and 10) when they repealed the 11th; especially since the Words of the Repeal are much more naturally interpreted of the whole: And it is certain, that the Church of *Rome* thought, at least one of the Cases specified in these two Acts as expressly against the Law of

“ God

God (*viz.* the marrying of the Brother's Wife) to be a  
 "disputable Case." *Gibson's Codex, Vol. I. p. 496.*

There were (as before observed) *three Clauses*, the first particularizes the Degrees; the second directs how they should be expounded.

The third enacts, that none should marry within the Degrees therein specified: And if any had so married, and afterward been separated, such Separation should be good; and if not separated they should be separated, &c. without any Appeal to the Court of *Rome* in the Case.

The *three Clauses* are all dependant on one another, and therefore (as I humbly conceive) all plainly repealed by the Words before cited.

Is it possible then, that Sir John could persuade himself that *his Reasoning in Support of this Statute was sufficient*? From his not insisting on it in the Result, it does not seem very probable; for from hence he passes to the *Canon Law*; and on that he chiefly rests the Point. Let us follow him there also.

### *Sir John Vaughan's Words.*

As it is true, That if a Marriage be declared by Act of Parliament to be against God's Law, we must admit it to be so; for by a Law (that is by an Act of Parliament) it is so declared.

By the same Reason, If by a lawful Canon, a Marriage be declared to be against God's Law, we must admit it to be so; for a lawful Canon is the Law of the Kingdom, as well as an Act of Parliament.

K 2

And

between the King and his Brother's Widow, by Act 1 M. Sess 2. c. 1.

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As on one Hand a Marriage must be admitted in our Courts of Judicature to be contrary to God's Law, if by an Act of Parliament, (*in Force and unrepealed*) it is declared to be so: So, on the other Hand, it must be there admitted, that a Marriage is not contrary to God's Law, when it is declared by an Act of Parliament *not to be so*; as it was

*Sir John Vaughan's Words.*

And whatsoever is the Law of the Kingdom, is as much the Law as any Thing else that is so; for what is Law doth not *suscipere magis aut minus*.

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Is then a Canon made by the Clergy in Convocation, tho' confirmed by the King, of *equal Authority with an Act of Parliament*? Hath the Clergy in Convocation by their own and the King's Authority only, without the Lords and Commons, *a rightful Power to make Laws* to bind all his Majesty's Subjects, *the Laity as well as Clergy*? Is this Assertion agreeable to the *Constitution of Great Britain*, and consistent with the Rights and Liberties of the People?

" I hold [said  
" Judge Tyrrel]  
" the King and  
" Convocation  
" without the Parliament, *cannot*  
" *make any Canons*  
" *which shall bind*  
" *the Laity, tho'*  
" they may the  
" Clergy."

What Power the Clergy had to make Canons was then (*viz.* 22 Ch. 2d *Easter Term*, in C. B. on *Grove and Elliot's Case* \*) disputed by the Court, and it was on the Result agreed on all Sides that " no Canons could be made to *alter the Law* without Parliament."

\* *Ventris*, p. 41, to 44.

The same (*viz.* That no Canon made by the Clergy, though confirmed by the King) binds the Laity, and particularly that the Canons of 1603 do not, is proved in *Jura Ecclesiastica*, Vol. I. from Page 162 to 165.

—“ The Reason given wherefore the Laity  
 “ were not bound, was that *fundamental Maxim*  
 “ of our Government ; That *what bound all,*  
 “ *must be assented to by all* ; and as to the Ca-  
 “ nons, they were not made with the As-  
 “ sent of the Laity ; for that the Laity are  
 “ not represented in Convocation, so cannot be  
 “ bound by their Acts, without an Act of Par-  
 “ liament. 1 *Peer Will.* f. 29 to 33, *Moor*  
 “ 755.” And the Grounds and Rudiments of  
 Law and Equity, published in the Year 1749,  
 proves the same by many great Authorities, p.  
 184 and 185. And that even with respect to  
 the Clergy, the *Canons* are but of slender  
 Force in *Comparison of an Act of Parliament* \*.

If any are bound by the Canons (without  
 doubt) it is the Clergy : yet, is it not evident  
 from their Answers to the Dissenters on this  
 Head, as well as from their general Practice,  
 that even they don't think themselves bound  
 neither in *Law nor Conscience* to observe them ?

Clear and plain Instances might be given of  
*many of the Canons* that are very little regarded

\* See more with relation to this in a *learned Treatise*, in-  
 titled, *An Examination of the Scheme of Church Power laid down*  
*in the CODEX JURIS, &c.* Printed for J. Roberts, near the  
*Oxford Arms in Warwick Lane*, A. D. 1735. Pages 148, 149,  
 150, and 152, said to be written by a learned Gentleman,  
 now in a high and honourable Station in the Law.



even by the Generality of the Clergy. As  
 of 1<sup>st</sup> XXIX, LV, LXVI, &c. But for Brevi-  
 ty's Sake I will here transcribe only Part of the  
 LIX, which enjoins " every Parson, Vicar,  
 " or Curate, upon *every Sunday and Holiday*  
 " before Evening Prayer, for *half an Hour or*  
 " *more*, to examine and instruct the Youth,  
 " and ignorant Persons of his Parish in the  
 " Ten Commandments, the Articles of the Be-  
 " lief, and in the Lord's Prayer; and dili-  
 " gently hear, instruct, and teach them the  
 " Catechism set forth in the Book of Common  
 " Prayer, &c." I cannot find that any of them  
 do this; there are very few, if any of them,  
 that catechise Youth *one half* of the Sundays and  
 Holydays in the Year: And of those that  
 do catechise sometimes, *scarce any spend*  
*half an Hour* in it. An undeniable Evidence  
 that the Canon is not regarded by them.

Nor does it appear to me, that the Eccle-  
 siastical Courts pay any Regard to the Ca-  
 nons, any further than it suits their Interest;  
 no not even the Prerogative Court of *Canter-*  
*bury*.

For Canon 101 enjoins, that " no Licence  
 " shall be granted for Solemnization of Ma-  
 " trimony betwixt any Parties, without thrice  
 " open Publication of Banns—but—unto  
 " such Persons only as be of good State and  
 " Quality, and that upon good Caution and  
 " Security taken."

And as to the Security, some of the Con-  
 ditions by the 102 Canon are to be, " That  
 " they

“ they have obtained thereunto the exprefs  
 “ Consent of their Parents (if they be living)  
 “ or otherwise of their Guardians or Gover-  
 “ nors.” And “ that they fhall celebrate the  
 “ faid Matrimony publickly in the Parifh  
 “ Church or Chappel where one of them  
 “ dwelleth, and in no other Place, and that  
 “ between the Hours of Eight and Twelvey in  
 “ the Forenoon.”

And by the 103 Canon, “ For the avoid-  
 “ ing of Fraud and Collufion in obtaining fuch  
 “ Licences and Dispensations,” It is further  
 appointed, “ That before any Licence for  
 “ the Celebration of Matrimony, without  
 “ Publication of Banns be granted, it fhall ap-  
 “ pear to the Judge, by the Oaths of two fuf-  
 “ ficient Witneffes, one of them to be known  
 “ either to the Judge himfelf, or to fome other  
 “ Perfon of good Reputation then prefent, and  
 “ known likewise to the faid Judge, that the  
 “ exprefs Consent of the Parents or Parent, if  
 “ one of them be dead, or Guardians, or  
 “ Guardian of the Parties, is thereunto had  
 “ and obtained.”

I cannot find that thefe three Canons were  
 obferved (before the making of the late Marri-  
 age Act) by any Ecclefiastical Court in *England*.

I never knew nor heard, that any of them  
 enquired into the *State and Quality* of the Per-  
 fons that applied for Licences, or that they  
 ever denied a Licence to any, on Account of  
 their Poverty, provided any one would pay  
 them for the Licence. I have known Licen-

ces granted (contrary to the 101 Canon) for Celebration of Matrimony betwixt Paupers relieved by their respective Parishes.

And in Disregard to the 102 Canon, they frequently grant Licences to marry in Parish Churches and Chappels, *where neither of the Parties ever dwelt*; and sometimes for Marriages *in private Houses*, and that too *even in the Night*.

And in Contempt of the 103 Canon, they grant Licences, without first requiring two *such Witnesses as the Canon directs*, to testify on their Oaths, that the Consent of Parents, &c. had been thereunto had and obtained; tho' this is in itself very fit and reasonable: And the *Mischiefs and Inconveniencies* that have arisen on account of their Disregard to these Canons, have been so great, that our Legislators have thought fit to pass an Act of Parliament to *prevent this Evil* \*.

If then the Clergy, and Ecclesiastical Courts, which the Canons more properly concern, do not observe them: Is it not highly absurd, and unreasonable, to expect that his *Majesty's Temporal Courts* should pay any Regard to them?

But if the Canons did oblige the Laity (*as I have shewn they do not*) yet the *Table* is of no Authority; the *Canon* does not affirm that all the Marriages *forbidden in the Table* are contrary to *God's Law*.

\* It may be fit to observe here, that nothing herein contained can reasonably be deemed contrary to any Part of the late MARRIAGE ACT: For the Marriages enacted and declared by that Act to be *null and void*, are no other than such as are contracted contrary to Law, and are therefore in very *Deed* in the Eye of the Law no Marriages.

It only says, “ No Persons shall marry  
 “ within the Degrees *prohibited by God's Law*,  
 “ and expressed in a *Table*, &c.” So that no  
 Marriage is prohibited by this Canon, unless  
 it is really and indeed *contrary to God's Law*,  
 as well as asserted so to be in *the Table*. But  
 as neither *Canon* nor *Table* are of any Authority  
 to *bind the Laity*, it is needless to insist  
 any longer upon it. Let me only add, that if  
 the Canon had affirmed that all the Marriages  
 mentioned to be forbidden in the Table, were  
 forbidden by God's Law, it *would have been*  
*absolutely on all Considerations an unlawful Canon*,  
 it being not only contrary to real Fact, as has  
 been herein before fully shown, but also *di-*  
*rectly contrary to an Act* of Parliament. For  
 the Act of 1 Queen Mary herein before in-  
 serted, expressly affirmed and enacted, that the  
 Marriage therein mentioned betwixt the King  
 and his Brother's Widow, should be “ deemed  
 “ and adjudged to be and stand with God's  
 “ Law, and his most holy Word,—and of  
 “ good Effect and Validity to all Intents and  
 “ Purposes.” And yet a Marriage in that  
 Degree, and in a Degree more remote than that,  
 was afterwards forbidden by the Table in *direct*  
*Contradiction to the said Act of Parliament*.

Thus have I gone through what Sir John  
 Vaughan mentioned, as alledged against the  
 Legality of that Marriage, on which the Judg-  
 ment of that honourable Court was then  
 founded, according to his own Report of it ;  
 and have shown (as I humbly conceive) that  
 that



that Judgment was grounded on several mistaken Suppositions, and therefore ought not to be made use of *any more* as a Precedent in this Case.

Since the Determination of this Case, *viz.* of *Hill* and *Good*, many Marriages have been contracted within the Degrees prohibited by the Table, and some of the Persons that contracted them have been prosecuted for such their Marriages in Ecclesiastical Courts, and have applied to the Courts of Law for Prohibitions, as may be seen in the Books of Reports, but generally with very little Effect. For the Courts of Law were then, I imagine (with humble Submission I mention it) too much influenced by a stale Objection of the Civilians, *namely*, That the Determination of the Lawfulness or Unlawfulness of such Marriages is *a Matter of Ecclesiastical Cognizance*; for *Divines* better know how to expound the Law of Marriage than the Common Lawyers, who (as hath been asserted) do not understand the Language in which it was written.

This *Objection* was strenuously urged, and fully answered, on *Harrison* and *Burwell's* Case \*; yet because on the *Strength* thereof *Prohibitions* have been *denied* by our Courts of Law, it may be fit here to give it a more particular Consideration.

On the Foot of this Objection two Questions may arise.

\* *Vaughan's Rep.* 207, 208. *Ventris* 21.

1st, Of the rightful Power of his Majesty's Temporal Courts to the Cognizance of Marriages betwixt near Kindred.

2d, Of the Fitness and Expediency of their exercising of that Power.

As to the first, The rightful Power of his Majesty's Temporal Courts in this Case, I think I may safely venture to assert (having, as I humbly presume, not only the clearest Reason on my Side, but also the Opinion of the whole Bench of Judges, when met together by the King's Command \*, on Purpose to consider the Case) that his Majesty's *Temporal Courts*, by Virtue of the last Clause of the Statute of 32 H. VIII. ch. 38. herein before inserted, p. 104, have the *whole and sole Cognizance* in this Case, as all Cognizance thereof is *taken away* from the *Ecclesiastical Courts* by that Clause. And as it was a settled Point long before that Time, that *all Acts of Parliament are Parcel of the Law of England, and do belong to the Judges of the Common Law, and shall be expounded by them, and not by the Civilians and Canonists, even though they concern the Clergy, and Ecclesiastical Jurisdiction* †. This then being sufficiently clear, we proceed to the next Question, where *all the Difficulty* (if there is any in the Case) lieth.

2d, The *Fitness and Expediency* of their exercising that Power.

\* King Charles the Second. See *Ventris* 10, and 21.

† *Coke's Rep. B. 13. p. 4.*

And as to this, If a Marriage is contracted betwixt Persons, who (after a careful Examination of the *Laws of God and Man*) think in their Conscience they may lawfully marry, and have the Approbation of their Parents and Friends also for it; and they are prosecuted for such their Marriage in an Ecclesiastical Court, to whom shall they go for Redress? where shall they fly for Protection, but to the *Law* \*, which was made and ordained for the Protection of the Innocent? If then they apply to a Court of Law, that hath a rightful Power to relieve them, will any reasonable Man assert, that it is not fit that Court should hear and consider their Case, and give them such Redress as they find to be just and reasonable?

But here again the *Question* occurs. How can they judge in the Case? They do not understand the Language in which the Law is written, and therefore cannot understand the Law; and consequently are incapable of making a right Judgment with Relation to it.

This Assertion is not only contrary to Reason, but is also directly contrary to the Doctrine of the Church of *England*, as established by the Law, viz. by the Act for Uniformity, &c.

\* “ It is most proper for the King to hinder the Violation of his Laws, by impeaching of Marriages, which the Law will not have impeached by inroaching Jurisdiction, as to hinder them from impeaching or drawing into Question Contracts for Lands, or other Things whereof they have not Cognizance.” *Vaughan* 209.

For she asserts in her Homilies, That “ in  
 “ Holy Scripture is fully contained what we  
 “ ought to do, and what to eschew. And,  
 “ although many Things in the Scripture be  
 “ spoken in obscure Myſteries, yet there is no-  
 “ thing ſpoken under dark Myſteries in one  
 “ Place, but the ſelf ſame Thing in other  
 “ Places is ſpoken more familiarly and plainly,  
 “ to the Capacities both of the Learned and  
 “ UNLEARNED \*.

And this is agreeable to the Opinions of  
 her beſt Divines ever ſince, even home to this  
 preſent Time, as might be eaſily and clearly  
 ſhewn, by great Numbers of Citations from  
 their Works : But, for Brevity's Sake, I ſhall  
 add one only from the learned Dr. *John Cony-*  
*beare*, now Lord Biſhop of *Briſtol*.

“ ‘The moral Rules’ [*ſaith he*] “ are [*viz.*  
*in Scripture*] “ plain and clear in every Re-  
 “ ſpect, delivered with the utmoſt Simplicity,  
 “ and enforced by the ſtrongeſt Motives ; ſo  
 “ that he who *errs in theſe, muſt be entirely*  
 “ *without Excuse*. Matters of poſitive Inſtitu-  
 “ tion are plain and clear, as to the Meaning  
 “ of the Precept, tho’ poſſibly in ſome other  
 “ Reſpects involved in Darkneſs †.”

The ſame (*if I miſtake not*) is alſo gene-  
 rally held by thoſe that diſſent from the Church.  
 “ God hath condeſcended to favour us with  
 “ his written WORD, in which is contained

“ ALL

\* Firſt Homily, Part 1ſt and 2d.

† Sermon on Scripture Difficulties, preached at *Exon*, Aug.



“ ALL that we *need* to know, *believe* and *do*,  
 “ in order to our Salvation. And whatsoever  
 “ is *necessary* hereunto, he hath delivered there  
 “ with so much *intelligible Plainness*, that it  
 “ will be a Man’s *own Fault* if he *perceive* it  
 “ *not*. This Word he hath given and ap-  
 “ pointed to be the common Rule of *every*  
 “ *Man’s* Faith and Practice \*.

And the learned Bishop of *Bristol* before cited, rightly observes, that “ a Law, as far as it is unintelligible, *ceases to be a Law* †.

“ To give a Law ; to promulge ; or to afford  
 “ Means of knowing it, do signify *one and the*  
 “ *same Thing*. What we are capable of dis-  
 “ covering to be fit and reasonable ; and con-  
 “ sequently to be the Will of God, *is to us a*  
 “ *Law*.” Again (says he) “ I maintain, that  
 “ no Man is, or can be obliged to Rules he  
 “ is absolutely incapable of knowing ‡.

Thus you see what the Protestant Doctrine is, *viz.* That whatsoever is *necessary* to be known and *practised* or *avoided*, is plain and clear in Holy Scripture to ALL, *viz.* to the *unlearned*, as well as to the Learned, and consequently that which *is not so, is not necessary*.

If this is true, *certainly* it is altogether *absurd* and *unreasonable* to assert, that the Laity are obliged to observe (or that they deserve to be punished for the Breach of) any Laws,

\* Doctrine of the Trinity stated and defended, by some *London* Ministers, p. 126.

† Bishop *Conybear’s* Defence of Revealed Religion, p. 21.

‡ *Ibid.* p. 101. See also *Vaughan’s* Rep. p. 208.

which

which Men of such *superior Parts* and *Learning*, as the honourable Judges of our Law are, cannot understand and explain.

*Object.* The Judges have not Time to study the Scriptures, in order to judge in such Cases. The Study of the Law is a hard Study, and the Application of it to particular Cases, in order to pass Judgment in the numerous Causes that comes before them, is very laborious, and employs all the Time they have to spare.

*Ans.* I humbly conceive, it is not necessary for them to bestow one Hour the more in studying the Scriptures on that Account.

When a Case of a doubtful Marriage is before them, may they not proceed, as (I take it) they usually do, in other Cases, *viz.* to hear what is alledged on each Side for and against the Lawfulness thereof. And as the Statute of 32 *H. VIII.* c. 38. plainly enacts and declares ALL Marriages to be *lawful* that are not *prohibited by God's Law*: Whoever excepts against any Marriage as an unlawful one, ought to produce the Law of God which prohibits it, and make it appear plain to the Judges, that the Marriage in Question is forbidden by that Law, and that the Law is now obligatory on us. If all these Things cannot be made clear, I humbly conceive there can be no Difficulty in determining what is fit to be done in the Case.

It is a Maxim in Law, *That such Interpretation ought to be had of all Laws, as that the Innocent*

*Innocent be not injured.* It is generally deemed better and more fit, that several guilty Persons escape Punishment, than that *one innocent Person* should suffer.

When therefore a Case of Marriage appears *doubtful*, ought it not to be considered on which Side the *greatest Danger lies*, if a Mistake should be made concerning it?

If a *Levitical Law* is urged and pretended to be a Prohibition of the Marriage in Question, concerning which the Learned greatly differ; while some insist that it is a Prohibition of Marriage, others as absolutely deny it. Again, while some of those who take it to be a Prohibition of Marriage betwixt the Persons therein mentioned, assert, that it is a Moral Law now obligatory on Christians; others not in the least *inferior* to the former, either for *Parts or Learning*, who take it as a Prohibition of Marriage, insist that it is only a positive Precept given to the *Jews*, and not obligatory on us. When the *Learned thus differ in Opinion*, and on that Account the Marriage in Dispute appears *doubtful*; if the Parties so married should be permitted to live together unmolested, what Evil can thence ensue? No one's Property would be invaded, no Persons injured; at the worst only a *Levitical Law perhaps* might be broken.

But if this doubtful Marriage *should prove to be a lawful one*, and yet (being by Mistake deemed unlawful) should be permitted to be dissolved by *Ecclesiastical Sentence*; in that Case

a *lawful Marriage would be broken*, Children lawfully begotten *bastardized*, and a Family which might have been otherwise useful to Society *perhaps utterly ruined*.

When the Case is such, Can there be any Room to hesitate on which Side to determine?

All the other Cases mentioned in the Books of Reports of Prohibitions applied for to the Courts of Common Law (concerning Marriages between near Kindred only) and *denied*, or granted, and afterwards *Consultations granted*, they are reported so short, that but little or nothing more can be learned from them but this; *That the Prohibitions were denied, or where they were granted and afterward Consultations granted, it was always upon Supposition that the Marriages they concerned, were contrary to the Law of God: Or that it was a Matter of Ecclesiastical Cognizance, and did not belong to them to judge whether it was, or was not so.* But I hope I have herein *fully and clearly proved both these to be mistaken Suppositions.* Therefore it would be mispending my own and my Readers Time to enter into any further Examination of those Cases.

I shall therefore conclude with the Words of Sir John Vaughan, on *Bole and Horton's Case*, 383.—“ If a Court give Judgment judicially, “ another Court is not bound to give the like “ Judgment, unless it think that Judgment “ first given was according to Law. For any “ Court may err, else Errors in Judgment  
L “ would



“ would not be admitted, nor a Reversal of  
“ them.

“ Therefore if a Judge conceive a Judg-  
“ ment given in another Court to be errone-  
“ ous, he being sworn to judge according to  
“ Law, that is in his own Conscience, ought  
“ not to give the like Judgment ; for that  
“ were to wrong every Man having a like  
“ Cause, because another was wronged be-  
“ fore.”

F I N I S.



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